



CLEANING
ACCOUNTABILITY
FRAMEWORK

CAF-COMPLIANT GUIDELINES

PERSONAL OR CARER'S LEAVE POLICY

CAF-compliant Personal/carer's leave policy guidelines

February 2020

Background

Many cleaners report difficulty in accessing their paid personal/carer's leave entitlements when they are sick or when they need to care for an immediate family member. This increases the likelihood of cleaners turning up to work when sick, which poses a WH&S risk to themselves, other cleaners and building tenants.

It is common in the cleaning industry for employers to require cleaners to provide a minimum amount of notice when taking personal/carer's leave, ranging from 2 hours to 8 hours. Companies have indicated to CAF that this is to ensure sufficient time to find a replacement to cover the shift.

While cleaning companies' operational requirements are a central concern, it is important to balance this with careful consideration of cleaners' access to their personal/carer's leave entitlements.

CAF has developed some guidance for cleaning companies to ensure their personal/carer's leave policy sufficiently balances their operational requirements with cleaners' minimum legal entitlements. This guidance has had input and approval from the following stakeholders: AI Group; the Fair Work Ombudsman; the Centre for Business and Social Innovation (UTS); and United Workers Union.

The National Employment Standards are the minimum standards that apply and the standards that are referred to in this policy. The Cleaning Services Award provides for personal/carer's leave as per the National Employment Standards. If an Enterprise Agreement applies, there may be additional entitlements for employees and you should refer to that document for guidance.

Under the National Employment Standards, full-time employees are entitled to 10 days of paid personal/carer's leave each year. Part-time employees are also entitled to pro rata of 10 days paid personal/carer's leave. A full-time or part-time employee is able to access paid personal/carer's leave if they are unable to attend work because of an injury or illness, or because they are providing care or support to an immediate family, or member of their household

who is ill, injured or otherwise affected by an unexpected emergency. An immediate family member includes a spouse, de facto partner, child, parent, grandparent, grandchild, sibling of the employee, or a child, parent, grandparent, grandchild or sibling of the employee’s spouse or de facto partner.

Casual employees are not entitled to paid personal leave. However, a casual employee cannot be dismissed because they are temporarily absent from work due to an illness or injury. Casual employees can also access two days of unpaid carers leave to care for an immediate family member who is ill, injured or otherwise affected by an unexpected emergency.

Comparison of legal minimum requirements with common industry practice, and suggestions approach

Dimension	<i>Fair Work Act 2009, s 107</i>	Examples of current industry practice that are inconsistent with the law	Suggested approach for cleaning companies
Notification - timing	<p>The notice:</p> <p>(a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and</p> <p>(b) must advise the employer of the period, or expected period, of the leave.</p>	<p>Minimum notification times:</p> <ul style="list-style-type: none"> • “Employees must notify their supervisor at least 4 hours before the start of the shift if they are going to take sick leave.” • “All employees must notify their Supervisor or Manager as soon as possible or by 10am for night shift if they do not intend to come to work due to an illness.” • “An absolute minimum of four hours’ notice is required. Whilst payment for the absence will still be made where such notice is not 	<p>It is acceptable to state a preference for notification timing (e.g. “Please provide at least x hours’ notice, if possible, so that a replacement can be arranged”) but there should be no implicit or explicit suggestion that access to paid personal/carer’s leave is contingent on meeting a minimum notification time.</p> <p>If an employer wishes to provide a suggested notification time, we recommend also including the following: “We recognise that it may not always be possible to provide X hours’ notice due to the nature of your illness or injury, and note that the Fair Work Act allows for notice to be provided “at a time after the leave has started”.</p>

		<p>provided, Employees will be subject to disciplinary action where adequate notice is not provided and no exceptional circumstances exist.”</p> <p>Tacit implication that if notice is not provided, sick leave will not be paid.</p> <p>In some cases disciplinary action is threatened.</p>	
<p>Notification - method</p>	<p>The Fair Work Act does not mention notification methods.</p>	<p>In many cases, employees are required to use a specific method of communication to notify their employer, or are specifically prevented from using a particular method of communication:</p> <ul style="list-style-type: none"> ● “A phone call to the supervisor is the only acceptable manner to notify of sick leave.” ● “Text messages to your supervisor are not an acceptable way to notify us about sick leave.” 	<p>It is acceptable to state a preference for a notification method (e.g. phone call to supervisor or intranet form) but there should be no implicit or explicit suggestion that reasonable alternative notification methods will limit an employee’s access to their paid sick leave and paid carer's leave entitlement.</p>

		<ul style="list-style-type: none"> • “If you are taking sick leave you must apply through the Company intranet.” 	
Evidence	<p>An employee who has given his or her employer notice of the taking of leave under this Division must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave was taken:</p> <ul style="list-style-type: none"> • For paid personal leave: because the employee was not fit for work because of personal illness/injury; • For paid/unpaid carer’s leave: to provide care or support to an immediate family member or member of their household because of their illness/injury or an unexpected emergency; 	<p>Limitations on evidence that would satisfy a reasonable person:</p> <ul style="list-style-type: none"> • “Statutory declarations not acceptable forms of evidence.” • “A maximum of two statutory declarations are acceptable per year.” • “You must provide a doctor’s certificate.” • “If you do not provide a doctor’s certificate, your leave will not be paid.” 	<p>It is acceptable to require evidence for as little as one day of absence, but it is not acceptable to restrict the use of statutory declarations or other forms of evidence that would not satisfy a reasonable person.</p> <p>It is also acceptable – and is good practice – not to require evidence for a single day’s absence, given that the money a typical cleaner on a student visa must pay to see a doctor is as much as they would receive for their shift. This will be a minimum standard of the CAF 4/5 Standard.</p>

Model compliant personal/carer's leave clauses

Regarding notice of personal/carer's leave

"Employees should inform [the company] as soon possible when taking sick leave. If possible, employees should try to inform their supervisor or manager x hour(s) in advance of the shift's commencement, so that a replacement can be arranged for that shift."

Regarding evidence for taking personal/carer's leave

Employers are not obliged to request that employees provide evidence when taking personal/carer's leave, and it is good practice not to request evidence for one or two days of absence on every occasion. However, if the employer elects to request evidence for as little as one day's absence, the evidence supplied need only satisfy a reasonable person that the leave was taken legitimately as per the table above. This includes medical certificates and statutory declarations. If it is the employer's policy not to pay employees sick leave unless appropriate evidence is supplied, this should be explicitly communicated in the policy.

"Upon return to work, please provide evidence such as a medical certificate or a statutory declaration."

Non-compliant clauses

Examples of non-compliant clauses	Reason for non-compliance
"Failure to notify with x hours' notice may result in disciplinary action."	This clause does not comply with the National Employment Standards which provides that an employee is required to give notice as soon as practicable (which might be after the leave starts) and to advise of the period, or expected period, of leave. If disciplinary action is taken against an employee for taking leave it may constitute a breach of the general protections under the Fair Work Act.
"Failure to notify with x hours' notice will result in unpaid leave being processed."	This clause does not comply with the National Employment Standards which provides that an employee is required to give notice as soon as practicable (which might be after the leave starts) and to advise of the period, or expected period, of leave. The failure to pay an employee their entitlement to leave, where all of the requirements are met, may result in a contravention of the National Employment Standards under the Fair Work Act.

<p>“Failure to provide a medical certificate will result in unpaid leave being processed.”</p>	<p>If other evidence is provided that would satisfy a reasonable person that the leave was taken in accordance with the Fair Work Act - for example, a statutory declaration - then the failure to pay leave may be a contravention of the National Employment Standards under the Fair Work Act.</p> <p>If no evidence is provided, then it may be reasonable for an employer to process the leave as leave without pay.</p>
<p>“Where such notice is not provided, employees will be subject to disciplinary action where adequate notice is not provided and no exceptional circumstances exist.”</p>	<p>An employee is required to give notice as soon as practicable (which might be after the leave starts) and to advise of the period, or expected period, of leave. If the employee complies with those requirements and disciplinary action is taken against the employee for taking leave it may constitute a breach of the general protections under the Fair Work Act.</p> <p>If an employee provides no notice (before or as soon as practicable after the leave is taken) then it may be open to the employer to take disciplinary action although this will depend on the individual circumstances.</p>
<p>“Texting is not an acceptable way of advising your supervisor / the company of absence.”</p>	<p>It is reasonable to require that employees call their supervisor rather than text, but in that case the policy should also state what happens if their supervisor does not answer.</p>
<p>“Any misuse of sick leave will result in a first and final warning or immediate dismissal.”</p>	<p>An employer must not dismiss an employee because the employee is temporarily absent from work because of illness or injury, where the employee has provided the appropriate evidence for taking the leave. If an employee is dismissed for taking leave it may constitute a breach of the general protections under the Fair Work Act.</p> <p>This protection does not unconditionally prevent an employee from dismissal whilst on leave and individual circumstances will need to be considered.</p> <p>Note: If an employee has an illness or injury and is absent for more than 3 months (in total or combined within a 12 month period) and is not paid for the duration of the absence/s then the above may also not apply.</p>

Template personal/carer's leave process flow chart

