

What is the change?

The Federal Court of Australia made a decision in August last year that changed how personal/carer's leave (**Personal Leave**) operated under the *Fair Work Act 2009*. In that decision, it was clarified that all permanent employees (including part-time) were entitled to 10 paid days of Personal Leave regardless of how many days they worked per week.

This decision was appealed to the High Court of Australia. The High Court has **overturned the decision**.

This means that the way Personal Leave operates reverts back to how we had always applied it prior to the decision in August last year, which is:

- Permanent full-time employees are entitled to 10 days' Personal Leave every year of service, equivalent to 76 hours every year of service (based on 38 ordinary hours per week)
- Permanent part-time employees and/or permanent employees working variable hours are entitled to a pro rata amount based on the number of ordinary hours worked in a two-week fortnightly period, or 1/26th of the employee's ordinary hours of work in a year, per year of service
- Personal Leave begins accruing from when an employee starts their employment and accrues progressively based on the ordinary hours that they work
- This leave must be accrued, and taken, in hours (not days)
- This leave is paid based on the ordinary hours that the employee would have worked had they not been on Personal Leave (excluding overtime)
- When an employee takes Personal Leave the number of hours taken as leave are subtracted from an employee's total balance

Employees who are entitled to accrue a greater number of personal/carer's leave days, through an Industrial Instrument, contract or policy provision, will continue to receive this greater entitlement.

The findings of the decision apply to employers and employees who are covered by the *Fair Work Act 2009*. It does not apply to state system employers.

What does this mean for me?

As an employer, you must ensure that employees other than casuals are provided with Personal 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 you and/or your business.

Employsure provides the below information to help ensure that you are complying with your obligations in this area. This outlines how to correctly accrue, deduct and pay personal/carer's leave.

How should I accrue Personal Leave?

Employees accrue Personal Leave based on the number of ordinary hours that they work in a two-week (fortnightly) period, or 1/26th of the employee's ordinary hours of work in a year of service.

The accrual rate is: number of ordinary hours worked in a period x 0.03846.

Here are some examples:

- Tulah is a full-time employee whose ordinary hours of work are 38 per week. On average, she also works an additional two hours of overtime per week. Tulah will accrue ten days' Personal Leave based on her ordinary hours of work (76 hours) over a year of service. If she takes a week's Personal Leave because she is sick or to care for a member of her immediate family who is sick, she will be entitled to be paid for 38 ordinary hours (not 40) at her base rate of pay
- Brendan is a part-time employee whose ordinary hours of work are 19 per week. He will accrue half the amount of paid Personal Leave over a year of service as Tulah (38 hours), reflecting the lower number of ordinary hours that he works. This is also reflected in how much he is entitled to be paid if he takes a week's Personal Leave. If he takes a week's Personal Leave, he will be entitled to be paid for 19 ordinary hours at his base rate of pay
- Sudhakar is a full-time employee who has entered into an averaging arrangement where he works an average of 152 hours every four weeks (based on 38 ordinary hours per week). The number of ordinary hours that Sudhakar works on any given day may vary according to the averaging arrangement. However, over a year he accrues ten days (76 hours) of Personal Leave. If he is sick and takes leave for a day, he will be entitled to be paid for the number of ordinary hours he was rostered to work on that day (but not for any additional overtime hours that he was to work).

Personal/Carer's Leave

August 2020



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.

What do I deduct when paid leave is taken?

When an employee takes Personal Leave the number of hours taken as leave are subtracted from an employee's total balance.

For example, if an employee has 76 hours of Personal Leave in their balance and they take a full day off in which they typically work 7.6 ordinary hours in the day, they will have 7.6 hours subtracted from their Personal Leave balance.

How much do I pay an employee on Personal 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 Leave. If they were due to work four ordinary hours, you pay four hours. If they were due to work 12 ordinary hours, you pay 12 hours.

We currently accrue Personal Leave in days – how do we convert this back to hours?

The calculation of Personal Leave is now much simpler. The accrual rate is: number of ordinary hours worked in a period x 0.03846.

Most payroll systems already have this function of accruing in hours, so please reach out to your payroll provider to confirm that this is the case.

Is there likely to be any other changes?

This decision has now been made by the High Court so must be followed. The Fair Work Ombudsman are yet to update their website with information on Personal Leave as a result of the High Court decision, so we will let you know if anything in this document needs to be clarified following their updates.

If you require specific advice, please contact the Advice Team on 1300 651 415.