

Subdivision A—Paid personal/carer's leave

95 Subdivision applies to employees other than casual employees

This Subdivision applies to employees, other than casual employees.

96 Entitlement to paid personal/carer's leave

Amount of leave

- (1) For each year of service with an employer (other than periods of employment as a casual employee of the employer), an employee is entitled to 10 days of paid personal/carer's leave.

Accrual of leave

- (2) An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service (other than periods of employment as a casual employee of the employer) according to the employee's ordinary hours of work, and accumulates from year to year.

97 Taking paid personal/carer's leave

An employee may take paid personal/carer's leave if the leave is taken:

- (a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.

Note 1: The notice and evidence requirements of section 107 must be complied with.

Note 2: If a female employee has an entitlement to paid personal/carer's leave, she may take that leave instead of taking unpaid special maternity leave under section 80.

98 Employee taken not to be on paid personal/carer's leave on public holiday

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

99 Payment for paid personal/carer's leave

If, in accordance with this Subdivision, an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

100 Paid personal/carer's leave must not be cashed out except in accordance with permitted cashing out terms

Paid personal/carer's leave must not be cashed out, except in accordance with cashing out terms included in a modern award or enterprise agreement under section 101.

101 Modern awards and enterprise agreements may include terms relating to cashing out paid personal/carer's leave

- (1) A modern award or enterprise agreement may include terms providing for the cashing out of paid personal/carer's leave by an employee.
- (2) The terms must require that:
 - (a) paid personal/carer's leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid personal/carer's leave being less than 15 days; and
 - (b) each cashing out of a particular amount of paid personal/carer's leave must be by a separate agreement in writing between the employer and the employee; and
 - (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.

(Fair Work Act 2009)

16 Meaning of *base rate of pay*

General meaning

- (1) The ***base rate of pay*** of a national system employee is the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:
 - (a) incentive-based payments and bonuses;
 - (b) loadings;
 - (c) monetary allowances;
 - (d) overtime or penalty rates;
 - (e) any other separately identifiable amounts.