

Update: Amended Regulations Change Pay Slip Requirements for Paid Family and Domestic Violence Leave

On 3 February, the Minister for Employment and Workplace Relations issued the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Regulations 2023* (the amended Regulations). The amended Regulations commenced operation on 4 February 2023.

The effect of the amended Regulations is to **remove** the ability for employers to record paid family and domestic violence leave (PFDVL) taken by an employee as 'special leave', 'miscellaneous leave', or 'leave – other' on payslips (as previously provided in the Regulations).

Members may recall that the recording PFDVL on pay slips in this manner had arisen because of a requirement contained in *Fair Work Amendment (Paid Family and Domestic Violence) Leave Act 2022* (assented to on 9 November 2022) that pay slips not reference PFDVL.

New Pay Slip Requirements

Under the amended Regulation 3.48, PFDVL must be recorded on a pay slip as:

- ordinary hours of work; or
- another kind of payment for performing work, including (but no limited to) an allowance, bonus, or overtime payment

However, an employee may request that the PDVL be recorded as an amount paid to the employee for taking a period of leave (e.g. annual leave), where the employee was expected to have been on such leave. In such circumstances, the employer may record the leave as requested.

Note: The intent of the changes is for employers to issue pay slips to employees which reflect as closely as possible the pay slip that would have been issued had the employee not taken PFDVL.

Compliance Deadline – Pay Slip requirements

Employers will have a **4-month “grace period” (until 4 June 2023) to comply with the amended Regulations**, in recognition of the time needed to (further) update their payroll systems to comply with the new requirements. During this time, an employer may continue to record PFDVL as 'special leave', 'miscellaneous leave', 'leave - other'. This grace period does not impact small business employers, as the PFDVL entitlement does not commence until **1 August 2023 for employers with less than 15 employees**.

Whilst it is understood that the amended Regulations are a result of concerns raised by some stakeholders that the identification of PFDVL as a type of leave on the pay slip could have made it relatively easy to identify to perpetrators, the latest changes nevertheless serve to highlight the risks of rushing through significant legislation without genuine consultation with industry or consideration of the practical ramifications of such changes.

VACC is currently updating its 'Paid Family and Domestic Violence Leave' and 'Record Keeping and Pay Slips' Fact Sheets, to reflect the latest change to pay slip requirements resulting from the amended Regulations.

In the interim, VACC encourages members seeking further information to contact the Workplace Relations team at lr@vacc.com.au or 03 9829 1123.

Paid Family and Domestic Leave (PFDVL) entitlement – FAQs

What is the PFDVL entitlement?

10 days paid family and domestic violence leave in a 12-month period. This replaces the previously existing entitlement under the National Employment Standards (NES) of 5 days unpaid family and domestic violence leave in a 12-month period.

When does the new PFDVL entitlement take effect?

The new amendment took effect from 1 February 2023 – and from 1 August 2023 for small business employers. A small business employer is one who employs less than 15 employees. This figure includes employees of any associated entities but excludes any casual employee that is not employed by the employer on a regular and systematic basis.

When can an employee take PFDVL?

An employee can take PFDVL if the employee is experiencing family and domestic violence; and the employee needs to do something to deal with the impact of the family and domestic violence; and it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

What does family and domestic violence mean?

Family and domestic violence means violent, threatening, or other abusive behaviour by an employee's close relative; a current or former intimate partner; or a member of their household - that both seeks to coerce or control the employee and causes them harm or fear.

Does PFDVL only apply to permanent employees (i.e. full-time and part-time)?

No. Unlike other forms of paid leave, PFDVL is also payable to casual employees who were rostered to work on the day/s PFDVL was taken.

Is PFDVL payable at the base rate of pay?

No. Unlike other forms of paid leave, PFDVL is payable at the 'full rate' of pay. An employee's full rate of pay is their base rate plus any incentive-based payments and bonuses; loadings, monetary allowances; overtime; penalty rates; and any other separately identifiable amounts.

Does PFDVL accrue for year to year?

No. PFDVL does not accrue from year to year. The full entitlement of 10 days is available immediately at the start of each 12-month period. For existing employees, this will be 1 February or 1 August (for small businesses). New employees starting after the applicable PFDVL commencement date are entitled to access the full PFDVL entitlement from their first day of employment, with their 12-month period being their employment anniversary date.

Is the PFDVL entitlement pro-rata for part-time (and casual) employees?

The PFDVL entitlement is not pro-rata. Employees are entitled to 10 days regardless of how many days per week they work.

How do I reference PFDVL on a pay slip?

You must not identify PFDVL on a pay slip. Under the amended Regulations, the pay slip must report such an amount as an amount paid to the employee for performance of ordinary hours of work or as another kind of payment made in relation to the performance of work, including (but not limited to) an allowance, bonus, or a payment of overtime. However, an employee may request that the PFDVL be recorded as an amount paid to the employee for taking a period of leave (e.g. annual leave). Under transitional arrangements that apply to non-small businesses, an employer may continue to record PFDVL as 'special leave', 'miscellaneous leave', 'leave - other' on pay slips until 4 June 2023.

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