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Unpaid Domestic Violence Leave: A new unpaid entitlement for school employees

During the review of Modern Awards over the last year, the Australian Council of Trade Unions (**ACTU**) sought to have inserted into Modern Awards, a provision providing employees with paid and unpaid family and domestic violence leave.

The ACTU's application was for the insertion of 10 days paid domestic violence leave. This was rejected by the Commission. The Commission stated that a cautious approach was required and found that the ACTU's suggestion was too broad and would be difficult to apply.

The Commission however decided to **include five days unpaid domestic violence leave in all Modern Awards**. The new requirement will:

- apply to *all* employees (including casuals);
- be available *in full* at the commencement of each 12 month period rather than accruing progressively during a year of service;
- *not* accumulate from year to year; and
- be available *in full* to part-time and casual employees (i.e. not pro-rated).

The Commission also decided not to require employees to access any available paid leave entitlement before accessing unpaid family and domestic violence leave.

When accessing the new leave entitlement, an employee, if required by their employer, must provide evidence that the leave is being taken for the purpose of dealing with family and domestic violence. Evidence may include a document issued by a police service, a court or a family violence support service, or a statutory declaration.

A standard clause for inclusion in all Modern Awards is expected to be finalised by the end of June 2018, and should appear in the Modern Awards shortly thereafter.

Once implemented, the new leave provision will add to existing unpaid leave entitlements under the Modern Awards and the National Employment Standards. Currently, all employees under a Modern Award and the National Employment Standards (including casual employees in some instances) are entitled to two days of unpaid carer's leave (after exhausting paid leave options), up to 12 months unpaid parental leave, two days of unpaid compassionate leave per occasion, and unpaid leave for eligible community service activities.

If you have any questions about how this Commission decision affects your school, Lavan's contacts are:

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