

CCIQ Webinar

Paid family and domestic violence leave

23 January 2023

**Chamber of Commerce
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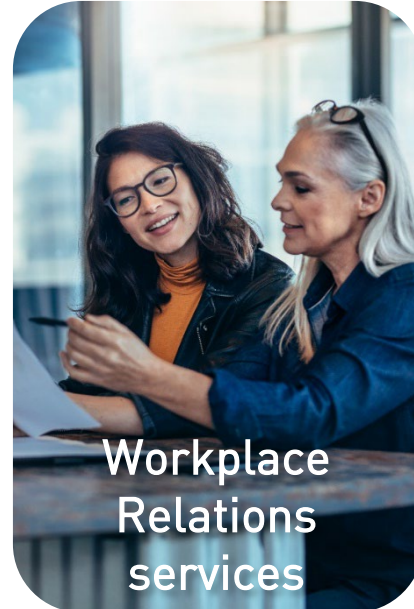
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Information presented is current as of 23 January 2023



Alex Grieg
CCIQ Workplace
Relations Consultant



Amy Hilliard-Lomas
CCIQ Workplace
Relations Consultant

- Currently the *Fair Work Act 2009* (Cth) (The 'Act') provides full-time and part-time employees 5 days of unpaid Family and Domestic Violence Leave (FDV leave).
- The *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (Cth) ('Amendment Act') has amended the Act to provide all employees 10 days of **Paid** FDV leave for every 12 months of employment.
 - Full-time, part-time and casual employees.
- All employees access paid FDV leave up-front from:
 - **1 February 2023** – for employees of businesses with 15 or more employees.
 - **1 August 2023** – for employees of businesses with 14 or fewer employees.
(employee headcount, including regular and systematic casuals)
- All new employees employed after the applicable dates will start their employment with a balance of 10 days of paid FDV leave.
- 10 days paid FDV leave balance resets on employee's anniversary date.

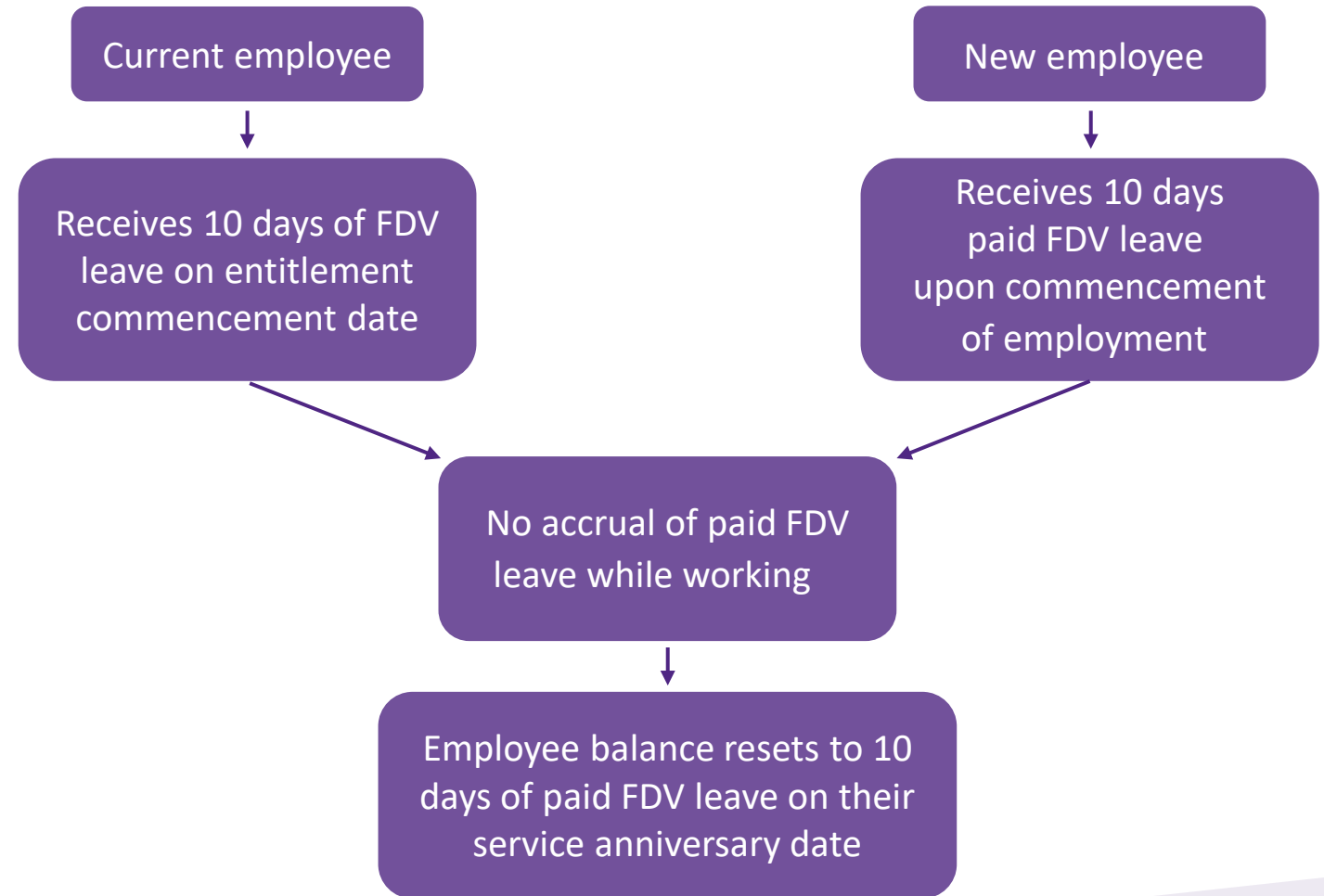
FDV Leave Balances

Paid FDV leave does **not**:

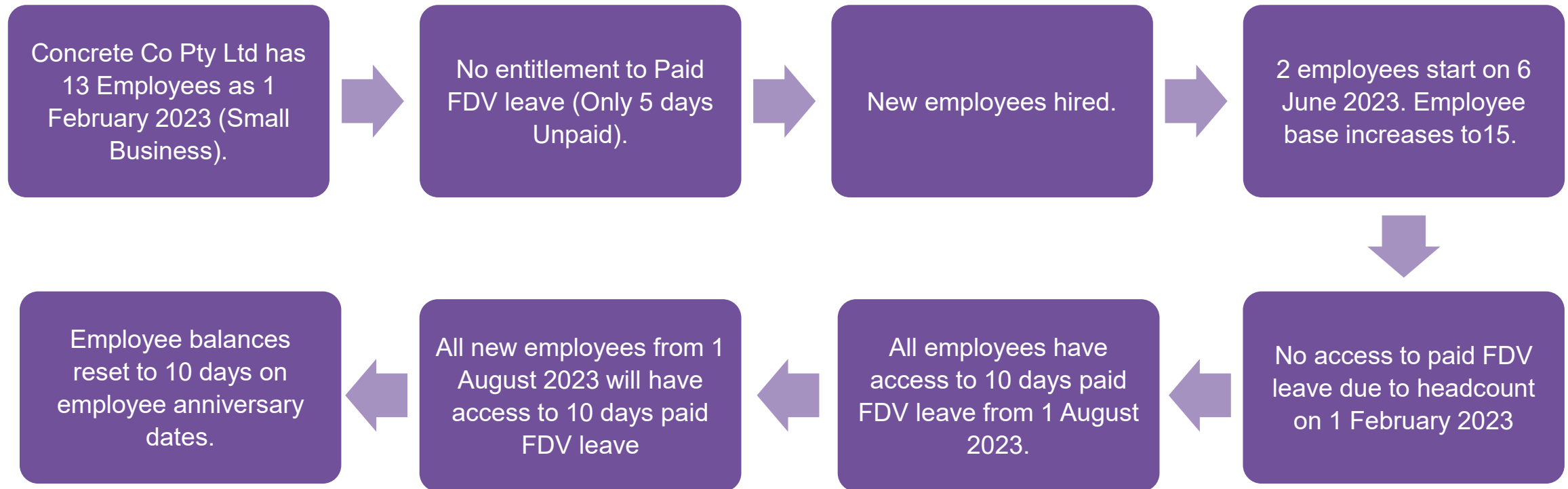
- Need to be accrued to be accessed,
- Accumulate and roll-over from year to year,
- Not get used on an hourly basis,
- Get paid out upon termination of employment if it is not used.

Paid FDV leave **does**:

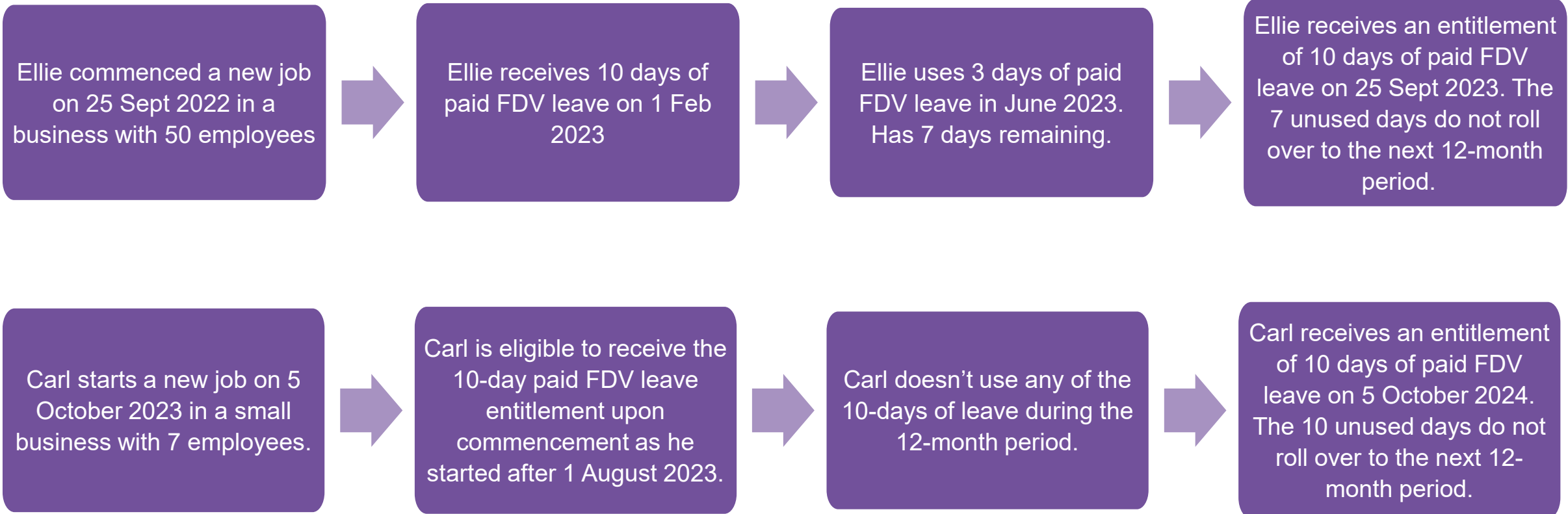
- Become available up-front to all employees,
- Reset to 10 days every 12 months on an employee's employment anniversary date,
- Get used per day.



Example



Examples



What is Family and Domestic Violence?

The Amendment Act defines 'Family and Domestic Violence' as:

Violent, threatening or other abusive behavior by an employee's,

- *close relative,*
- *member of their household, or*
- *current or former intimate partner, that:*
 - *seeks to coerce or control the employee, and*
 - *causes them harm or to be fearful.*

Amendment Act has added 'member of their household', and 'current or former intimate partner' to definition.

A close relative:

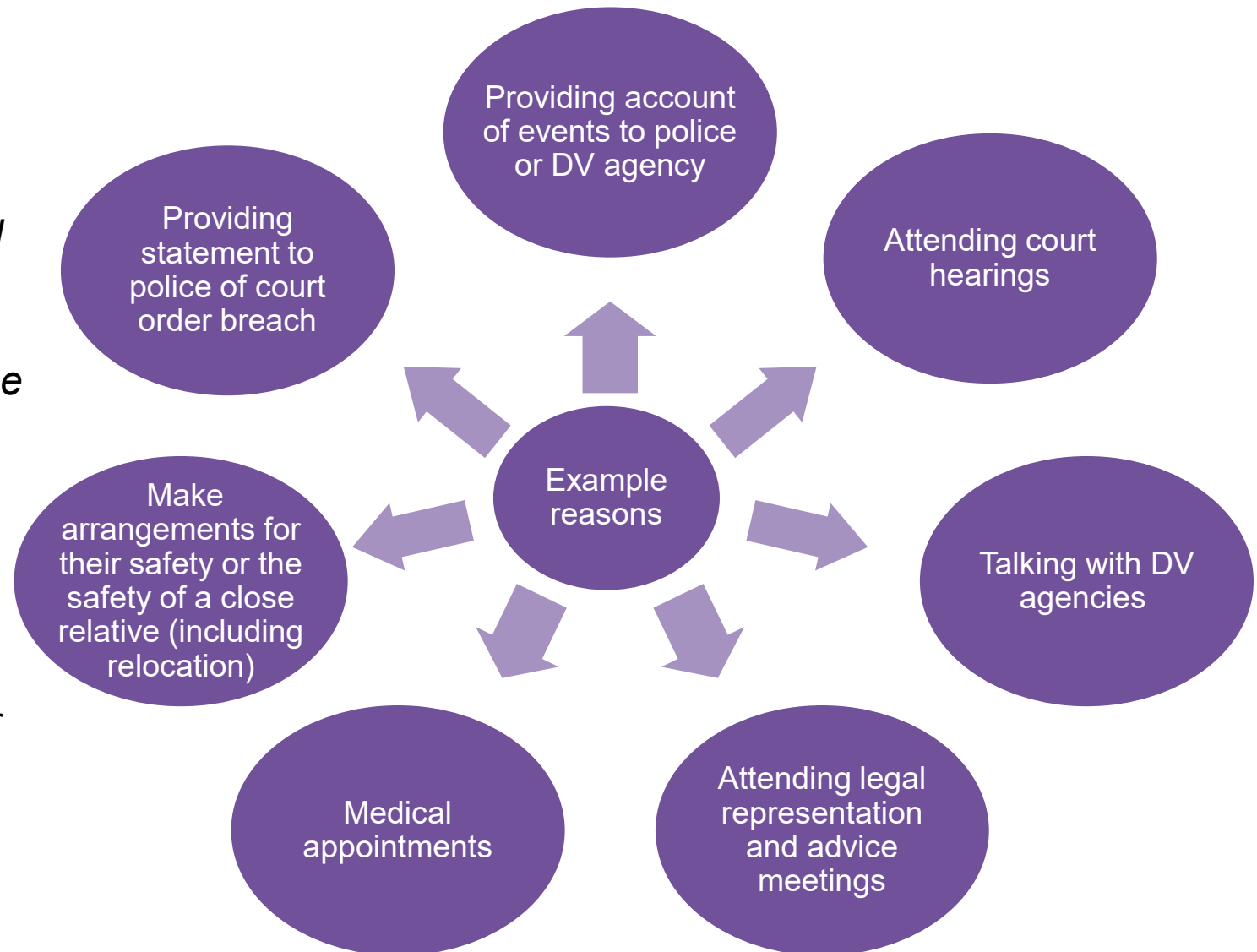
- Parent or grandparent,
- Child or grandchild,
- Sibling,
- Spouse or former spouse,
- De facto partner or former de facto partner, or
- A person related to the employee according to Aboriginal or Torres Strait Islander kinship rules

What is Family and Domestic Violence Leave?

s106b 1(a)(b) of the Act states FDV can be taken leave if:

- *the employee is experiencing family and domestic violence;*
- *they need to do something to deal with the impact of family and domestic violence, and*
- *it is not practical for them to do so while they are working.*

This is a very broad definition and can cover a range of situations.



1. Lana can use her paid FDV leave to take time off work and seek legal counsel for the FDV she is experiencing, and make a Domestic Violence Protection Order.
2. Brad can use his FDV leave to attend a court hearing for a FDV order against his partner.
3. Beth can use her paid FDV leave to take time off work to help her daughter and grandchild relocate as they cannot be in their home because of family and domestic violence.

Employees who are not the victim of Family and Domestic Violence can take paid FDV leave in very specific situations.

Request for paid FDV leave

- The employee notifies their employer they are experiencing FDV and need time off work to do something to deal with family and domestic violence; and
- It is not practical to do that outside their hours of work.

Evidence Requested by Employer

- Documents issued by the police service,
- Documents issued by a court,
- Family violence support service documents, or
- Statutory declaration.

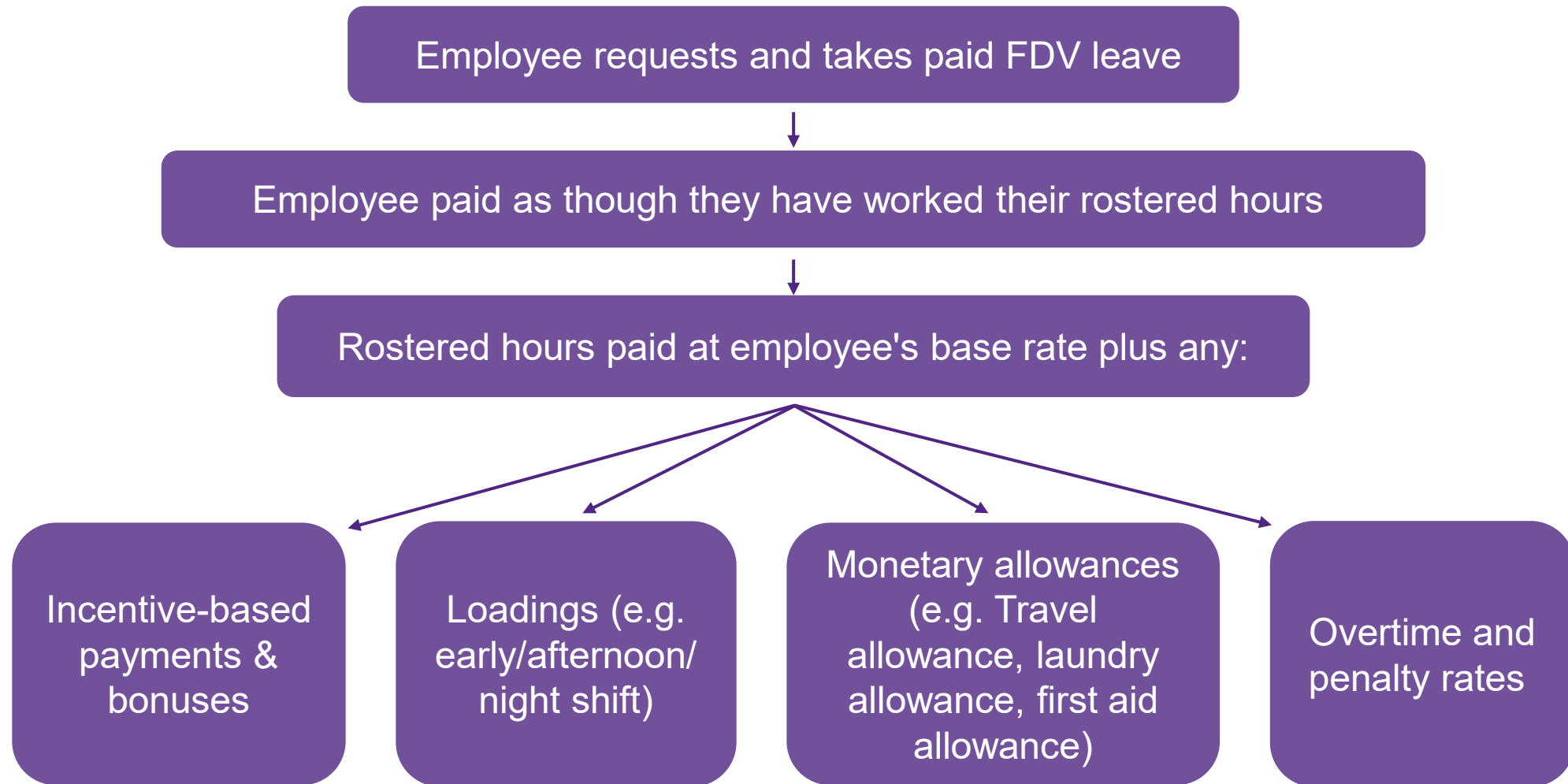
Employer Views and Accepts Evidence

- Evidence should be assessed and deemed acceptable before leave is granted and paid.

Standard of Evidence

Must convince a reasonable person that the employee is genuinely entitled to take paid FDV leave.

Payment of paid FDV Leave



Note

Paid FDV leave is used per day and not per hour. One day of leave is still deducted for each day an employee is absent, even for a half day.

Emily is a casual employee and needs to take 5 days of leave from Tuesday to Saturday to deal with the impact of FDV. During the 5 days Emily takes leave, she was rostered to work 5 ordinary hours each day. Emily's employer needs to pay her:

- The casual hourly rate for the 20 hours she was rostered on to work Tuesday to Friday, and
- The weekend casual penalty rate for the 5 hours she was rostered on for the Saturday, and
- Any other amounts that she would have been entitled to and paid if she'd worked her rostered hours (such as allowances and shiftwork loadings).

Emily's balance of paid FDV leave is reduced by 5 days to 5 days. Her balance will reset to 10 days on her next annual work anniversary.

Jane is a full-time employee working Tuesday to Friday and needs to take 2 days of leave from Thursday to Friday one week to assist her daughter to relocate after experiencing domestic violence. During the 2 days Jane takes leave, she was rostered to work 8 ordinary hours and 2 overtime hours each day. Jane is also paid a daily travel allowance for each shift she attends.

Jane's employer needs to pay her:

- Base hourly rate for the 8 ordinary hours she was rostered on to work Thursday and Friday, and
- Overtime hourly rate for the 2 overtime hours she was rostered on to work Thursday and Friday, and
- Daily travel allowance for both shifts.

Jane's balance of paid FDV leave is reduced by 2 days. Jane will have a balance of 8 days until it resets to 10 days on her employment anniversary.

Interaction with Other Leave Entitlements



Note: Casuals are not entitled to paid annual leave or personal/carer's leave, which means the above does not apply to them.

Payslips

Note

The *Fair Work Regulations 2009* are yet to provide further direction on what is suitable to put on a pay slip that includes a period of paid FDV leave that has been taken or FDV leave balance.

Suggestion

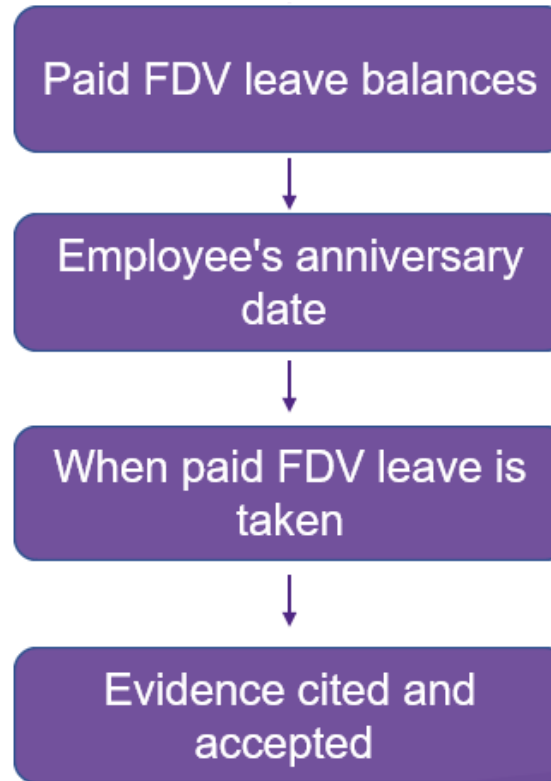
To retain confidentiality, sensitivity and safety of the employee, CCIQ recommends discussing with the employee:

- Who has access to their payslip?
- If it's safe to name paid FDV leave as something else, for example:
 - "other leave entitlement" or
 - "leave – other" or
 - "training"

Tips:

- Referring to paid FDV leave on the payslip can put employee at risk, especially if the offender has access to the payslip.
- Naming the paid FDV leave as annual leave or personal leave can cause inaccuracies in payments and accruals, so this is not advised.

Record Keeping



- Suggest 1 person maintains and accesses records to retain confidentiality.
- Records should be kept for 7 years, as per s535 of the FW Act.

Example of Record Keeping

The screenshot shows the Microsoft Excel interface with the 'Home' ribbon selected. The ribbon includes options for File, Home, Insert, Page Layout, Formulas, Data, Review, View, Automate, and Help. The 'Home' ribbon is divided into sections: Clipboard (Paste, Cut, Copy, Format Painter), Font (Calibri, 11, Bold, Italic, Underline, Paragraph, Text Color), and Alignment (Text Alignment, Orientation, Merge & Center). The formula bar shows 'J30'. The spreadsheet grid has columns A through F and rows 1 through 5. The data in the spreadsheet is as follows:

	A	B	C	D	E	F
1	Employee Name	Service Anniversary	No. Days Taken	Dates of Leave	Evidence Cited	
2	BJ Smith	16 Decemeber 2016	4	13-17 August 2023	Yes	
3						
4						
5						

- No government funding to employers for paid FDV leave.
- Paid FDV leave balances cannot be cashed out upon request by an employee
- Unused paid FDV leave is not paid out upon termination of employment.
- Introduction of paid FDV leave will be independently reviewed in early-mid 2024.
- Failing to provide paid FDV leave will breach the *Fair Work Act 2009* (Cth), possible compliance action and General Protections claims.

- Be aware of relevant start date.
- Develop a recording keeping system.
- Create a plan for handling evidence.
- Know and understand your obligations and duties.
- Consider extending roster notice timeframes.
- Ensure budgeting plans account for the new paid entitlement.

Family and Domestic Violence Leave Policy:

- paid leave entitlement
- leave request process
- evidence
- payment of FDV leave,
- confidentiality
- record keeping

How Can CCIQ Help You?

Review your
current FDV
leave policy

FDV leave policy
template

Create a FDV
leave policy
specific to your
business

Review your leave
entitlements
policy

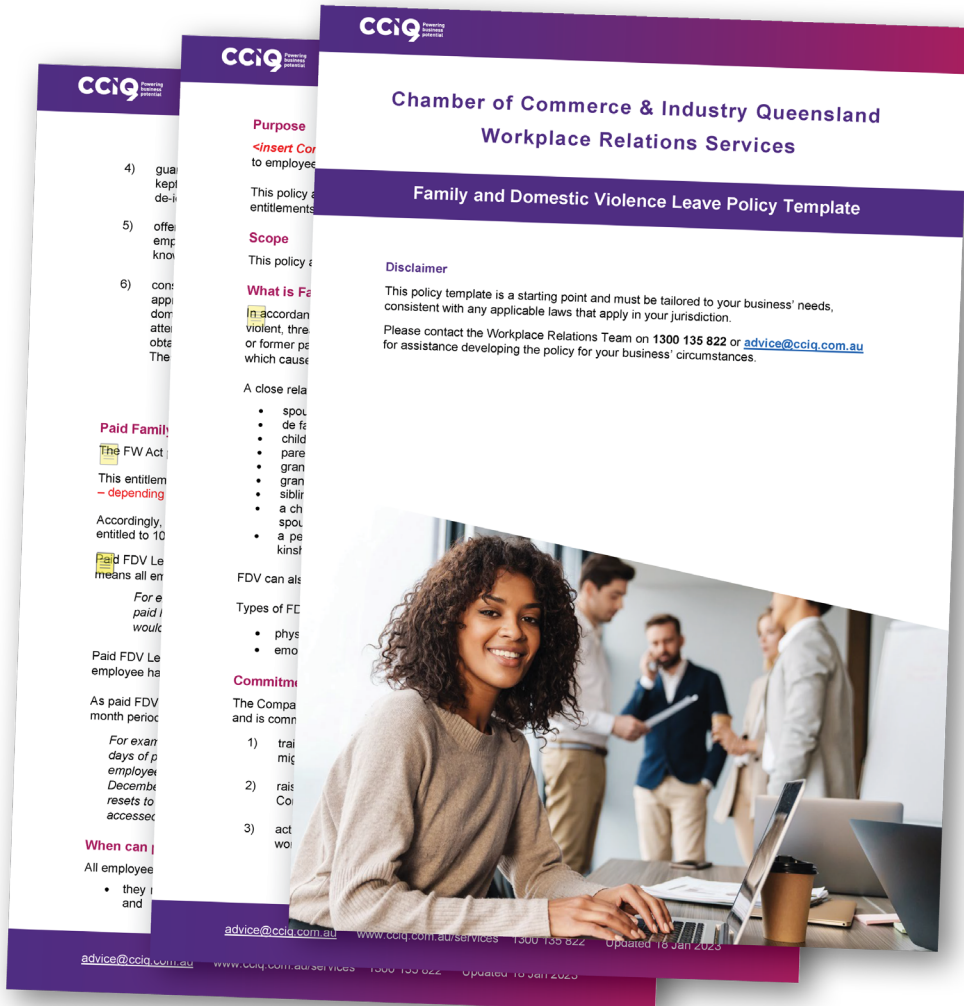
Provide advice on
an appropriate
record keeping
system for
FDV leave

Answer your
questions about
FDV leave

Develop a
communication
plan for your
business

Provide advice
on FDV leave
situations

Family and Domestic Violence Leave Policy Template



The policy template contains all information you need to include in your FDV leave policy.

The template has scope for you to tailor it to meet your business' needs.

Cost:

Member price = \$150 (incl GST)

Non-member price = \$250 (incl GST)

Call us on 1300 135 822 or email advice@cciq.com.au to purchase the policy template

We are your team for workplace matters

CCIQ members can call us on 1300 135 822 or email advice@cciq.com.au to seek advice on paid FDV leave.

Members and non-member can contact us to engage our consultancy services.

Go to our website to find out more!
www.cciq.com.au



Joanna Minchinton
General Manager
Workplace Relations,
People & Culture



Michael O'Brien
Senior Workplace
Relations Consultant



Alexander Grieg
Workplace Relations
Consultant



Amy Hilliard-Lomas
Workplace Relations
Consultant



Fernando Chu Gonzales
Workplace Relations
Consultant

Not a member? Our team can help you choose a membership that's right for you.