



**MEDIA ALERT**

**Casual workers win new right  
to time off for family illness  
or emergency**

- Unions finalise agreement with employers as part of Work and Family Test Case
- 2.2 million casuals — more than a quarter of total workforce — win new right to time off work to care for a sick child or family member
- ACTU President Sharan Burrow will announce the new work right for the first time today

**Media Conference**

**Monday 5 July 2004 — 11.00am**

**Sharan Burrow, ACTU President**

**Level 9, Boardroom**

**NSW Labor Council**

**377 Sussex St — Sydney NSW**

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**[www.actu.asn.au](http://www.actu.asn.au)**



## MEDIA RELEASE

Embargoed until 1.00am Monday 5 July 2004

# Two million casual workers win new right to time off for families

Unions have finalised an agreement with employers for a new right for more than two million casual workers to take time off work to care for family members whenever they have an illness or unexpected emergency.

Announcing the new work right for the first time today, ACTU President Sharan Burrow said:

This new workplace right is an important breakthrough for working families. It means that working people will have the right when a family emergency or illness occurs to make caring for a loved one their priority.

They may not get paid for it, but they can feel comfortable to take time off work and not risk losing their job for putting their family first.

It was recently reported that unions and employers were close to agreeing on an extension of paid leave for permanent employees to meet family care and emergency responsibilities from the current 5 days a year to 10 days a year. This agreement has now been finalised.

What is more, an important and previously unreported aspect of the agreement is a new right for casual workers to take time off to care for family members.

There are over 2.2 million casual workers in Australia — more than a quarter of the total workforce — and this includes 400,000 working mothers with young children who currently have no right to any leave from work to care for a sick child or relative.<sup>1</sup>

Under the agreement:

- Casual workers will now have a right to take up to two days off work to care for a family member due to a family illness, unexpected emergency, or birth of a child and also in cases of the death of a family member.
- Employers will be obliged to re-engage the casual worker in no less a favourable position — that is, with the same number of shifts or usual hours of work.
- There is no limit on the number of two-day absences from work that a casual worker can take in a year, but because they will not be paid it is likely to only be used when necessary.
- Casuals will be required to provide reasonable notice to employers that they need time off — usually before or soon after the start of their normal shift or start time. Reasonable evidence of the family emergency is also required such as a medical certificate, letter from a teacher or carer, or a statutory declaration.

The new agreement has been lodged with the Industrial Relations Commission and will be considered as part of the ACTU Work & Family Test Case to be heard later this year.

The Work & Family Test Case will also decide union claims for flexible working hours and holiday times to accommodate school and childcare, a choice for parents to work part time, and the extension of unpaid parental leave from 12 to 24 months. "

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<sup>1</sup> Casual workers generally have no leave entitlements. The exceptions are long-term casuals who have a right to 12 months unpaid parental leave following the birth of a child that was (a right won in a previous ACTU test case) and, in a very small number of cases, where specific industrial awards provide casuals with minor leave entitlements.



## Family Provisions Case

### Carer's Leave and Emergency Leave

### Agreement Arising from Conciliation

This agreement has been reached following an extensive conciliation process before Senior Deputy President Marsh in respect of applications by the ACTU, Ai Group and ACCI to vary various awards.

It seeks to dispose of the applications made by the ACTU, Ai Group and ACCI relating to paid carer's leave and the ACTU's application relating to emergency leave.

#### **1. Agreed matters**

The following matters relating to award personal leave provisions have been agreed upon:

- 1.1 The existing definition of "immediate family" will be retained. Within the next six months the parties will jointly review the definition to ascertain whether there are any discriminatory aspects.
- 1.2 Bereavement leave will be transferred to a separate award clause. Bereavement leave will become a stand-alone entitlement which will be available on each occasion that there is a death, subject to the qualifying conditions set out in the relevant award clause. In addition, an employee may take unpaid bereavement leave by agreement with the employer.
- 1.3 The award provisions relating to sick leave will be renamed "Personal leave for personal injury and sickness". This leave is for the purposes of personal illness or injury and is subject to notice and evidentiary requirements. (See 1.7).
- 1.4 The award provisions relating to carer's leave will be renamed "Personal leave to care for an immediate family or household member". This leave is for the purposes of caring for members of the employee's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. This entitlement is subject to the employee being responsible for the care and support of the person concerned and is subject to notice and evidentiary requirements. (See 1.7).

- 1.5 An employee is entitled to use up to 10 days of personal leave, including accrued leave, in a year for the purposes of caring for members of the employee's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. Where the existing five day limit on carer's leave in an award is expressed in terms of hours, an hourly equivalent to 10 days which is double the existing hourly carer's leave limit in the relevant award would apply, eg. a 38 hour limit would become a 76 hour limit and a 40 hour limit would become an 80 hour limit.
- 1.6 By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes of caring for members of the employee's immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.
- 1.7 The following evidentiary requirements apply:
  - 1.7.1 The existing evidentiary requirements in the relevant award would apply for leave taken for personal illness or injury.
  - 1.7.2 The existing evidentiary requirements in the relevant award would apply for leave taken to care for members of the employee's immediate family or household who are sick and require care and support.
  - 1.7.3 When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.
- 1.8 Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) of unpaid leave per occasion, provided that notice and evidentiary requirements are met.

1.9 Casual employees are not entitled to personal leave but subject to notice and evidentiary requirements, casual employees are entitled to not be available to attend work, or to leave work:

- If they need to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency or the birth of a child; or
- Upon the death in Australia of an immediate family or household member.

The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (ie. 2 days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

## 2. **Casual employees**

The agreed position set out in 1.9 is not intended to alter the nature of casual employment and is without prejudice to any parties' arguments about the nature of casual employment.

## 3. **Model award provisions**

Model award provisions dealing with personal leave, bereavement leave and casual employment are set out in **Attachment A**. The rights of all parties are reserved to seek to tailor such provisions to existing award structures and concepts, including to avoid a diminution of access to leave for caring purposes. An example of how the model is applied to the *Metal, Engineering and Associated Industries Award 1998 – Part I* is set out in **Attachment B**.

**Appendices available from the ACTU website: [www.actu.asn.au](http://www.actu.asn.au)**