

Menstruation and Menopause – Flexible Working Arrangements and Leave – Advice

Purpose

1. The purpose of this advice is to provide guidance to managers, employees and HR practitioners on key supports and leave entitlements available to employees (other than casual employees) experiencing menstruation and menopause symptoms during hours of work.

Background

2. In 2022, the ACT Legislative Assembly passed a resolution to develop and implement a menstruation and menopause policy. Key elements of this resolution required the Government to:
 - a. develop, in consultation with relevant stakeholders, a menstruation and menopause policy for the ACT Public Service (ACTPS) that enables employees to meet their work commitments and manage the impacts of menstruation and menopause in the workplace; and
 - b. prepare a report to the Legislative Assembly which advises how leave to support menstruation and menopause could be implemented within the ACTPS.
3. Further to the above, the CPSU also lodged claims on behalf of its members for menopause and menstruation leave during the 2022 Enterprise Agreement Bargaining negotiations. To take effect of this resolution, and to further support the ACTPS workforce, the Government endorsed enhancements to leave entitlements within approved ACTPS Enterprise Agreements from 2023.
4. It is the Government's intention that Personal Leave in Special, Extraordinary or Unforeseen Circumstances (SEUC) would be accessible for the purposes of employees managing menstruation and menopause symptoms (among other eligible circumstances).

Application

5. This advice is a whole-of-government instruction issued by the Head of Service under section 17(2)(a) of the Public Sector Management Act 1994 (PSM Act) and binds all employees engaged under the PSM Act and all public sector employers within the meaning of section 152(1) of the PSM Act.
6. For the purposes of this advice, any reference to the Head of Service and/or Director-General is also taken to be a reference to a public sector employer within the meaning of section 152(1) of the PSM Act.
7. For the purposes of this advice, employee means an officer, or a temporary employee who is employed or engaged under the PSM Act in a classification set out in Annex A.
8. This advice applies to all ACT Government Directorates and Public Sector bodies in relation to employees (other than casual employees) covered by an Enterprise Agreement which contains Personal Leave in Special, Extraordinary or Unforeseen Circumstances.

9. ACTPS employees¹ (other than casual employees) are eligible to utilise up to a maximum of 10 days Personal Leave in Special, Extraordinary or Unforeseen Circumstances (SEUC) for menstruation and menopause symptoms under their applicable Enterprise Agreement.
10. It is recognised that menstruation and menopause symptoms may not be linked to an illness. The expansion of this leave type is to support employees to meet their work commitments and manage the impacts of menstruation and menopause during work hours.
11. The introduction of “Special” into the Personal Leave in SEUC leave type has been named as such to enable employees to access an appropriate leave type whilst also removing potential stigmatisation when being utilised for menstruation and menopause purposes.

Key Legislative Provisions

12. This advice should be read in conjunction with clause E5, of the relevant 2023 – 2026 ACTPS Enterprise Agreement (or equivalent provision).

Flexible Working Arrangements and Support

13. Various flexible working arrangement options may also be available to support employees to meet their work commitments while managing menstruation or menopause symptoms without the need to access leave entitlements. This may include, but is not limited to, the following:
 - a. The opportunity to stay in the workplace under circumstances which encourage the comfort of the employee. Employees should discuss their individual circumstances with their managers to determine available options.
 - b. The opportunity to work from the comfort and privacy of the employees’ home while managing symptoms, if the employee’s role can be undertaken from home.
14. Further information and flexible working options can be found in the [Flexible Working Arrangements Policy](#) and the relevant Enterprise Agreement.
15. Consideration of the employees requested flexible working arrangement should be made on a case-by-case basis.
16. Where flexible working arrangements may be unsuitable, Personal Leave in SEUC remains available. Employees may apply for a Flexible Working Arrangement and/or Personal Leave in SEUC depending on their circumstances.

¹ ACTPS employees includes Senior Executive Staff (SES) as they are entitled to Leave provisions under the Enterprise Agreements as per Section 63 of the Public Sector Management Standards 2016.

Leave Entitlements Overview

12. Personal Leave in SEUC provides for three overarching events where employees may be eligible to access the leave. Examples of these may include, but are not limited to the following:

Special event	Extraordinary event	Unforeseen Circumstance
<p>An event where there was a particular health and wellbeing related circumstance that impacted an employee's ability to perform their regular duty.</p> <p>For example, menstruation, menopause, a funeral, difficult news received that causes distress and prevents the employee's ability to attend for duty (such as receiving a medical diagnosis in regard to self or immediate family or a breakdown of a relationship).</p>	<p>An event that does not occur regularly in an employee's life and is unlikely to occur that may involve a threat to their/others life and prevents the employee's ability to attend for duty.</p> <p>For example, a police or other emergency event such as a home lockdown due to a local threat in the vicinity of their home, being a witness of a crime and required to provide witness statements/interviews or assistance to police.</p>	<p>A circumstance where it was unexpected and/or caused damage/danger to an employee or the employees' personal property and has come at short notice and impacted the employee's ability to be available for duty and/or perform duty.</p> <p>For example, a fire at home, car accident, the unexpected closure of the childcare centre the employee's children attend.</p>

13. As noted above, the "Special" component of Personal Leave in SEUC may be utilised where employees are required to be absent from work for menstruation and menopause symptoms.
14. Personal Leave in SEUC provides for up to a maximum of 10 days* leave within any accrual year. From 1 January 2025, the 10 day entitlement will reset for all employees, other than casual employees. This will continue to reset on 1 January each year.
- *Please note that the maximum of 10 days leave for Personal Leave in SEUC encompasses all three circumstances as a total. For example, where an employee accesses 2 days SEUC for a flood emergency in their home and a further 2 days SEUC due to their children's childcare centre closing unexpectedly, the employee would only have 6 days remaining within the same accrual/calendar year to be utilised for menstruation or menopause purposes.
15. Personal Leave in SEUC is non-cumulative and if granted is deducted to the extent of the employee's available Personal Leave credits.
16. If an employee has exhausted their Personal Leave balance, they may be able to utilise flex leave or another type of leave if appropriate.
17. This leave type does not normally require documentary evidence in order to access it, however it is at the manager's discretion to request reasonable evidence before granting the leave.
18. Leave for menstruation or menopause symptoms under the Personal Leave in SEUC leave type may be taken as consecutive or single days, or as part days.
19. Leave should not be granted under SEUC where another form of leave is more appropriate. For example, in circumstances where an employee is unfit for duty due to a personal illness or personal injury, it may be more appropriate to access Personal Leave in accordance with clause E4 of the ACTPS Enterprise Agreement. Managers and employees must assess each circumstance presented and determine the most applicable leave type.



Procedure/Applications for Leave

20. Employees applying for this leave type can do so by accessing the OneGov Service Centre portal at [Apply for Leave](#) and selecting the Special, Extraordinary or Unforeseen Circumstances leave type.
21. Any request should be undertaken in a considered and private manner whilst recognising that each employee has individual circumstances and needs.

Managers

22. Managers are responsible for approving SEUC leave and:
 - a. are encouraged to apply a common sense and flexible approach in approving such leave, in recognition that every employee and situation is unique;
 - b. have an obligation to keep the details disclosed private and confidential;
 - c. have an obligation to be supportive and avoid narrowly interpreting the entitlement. They should adopt a flexible approach to applying the leave provisions and remember that the purpose is to support employees experiencing menstruation and menopause symptoms; and
 - d. should seek assistance from their directorate Human Resources area in a way that maintains confidentiality of the employee if there are any concerns regarding usage of this leave type.

Consultation

23. This advice was developed in consultation with OIRWS, ACTPS People Forum and Unions.

References

24. The relevant legislation, policy and employment arrangements underlying this advice are:
 - a. *Fair Work Act 2009*
 - b. [ACTPS Enterprise Agreements](#)
 - c. [Flexible Working Arrangements Policy](#)

Further Information

25. Please direct any queries relating to this advice to the inbox: eba@act.gov.au.



Review

26. This advice is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the advice.

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On behalf of the Head of Service

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