

TSS Disability Leave Guide

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Acknowledgements

Almost one in five Australians report living with a disability. Despite being a significant proportion of the community people living with a disability can be highly misunderstood leading to unjust impacts on people living with a disability and high levels of inequality.

The Disability Leave provision supports Accessible Island (Disability Framework for Action) which is a whole-of-government approach to ensure that all government departments implement socially just policies and practices for Tasmanians with disability.

Throughout the development of the Guide we were mindful that every person living with a disability is unique. It is important to be aware of this and not make assumptions.

All TSS employees should feel safe, supported, respected, and included at work. When an employee living with a disability communicates their intent to access Disability Leave, the intent of the entitlement is that it should be able to be accessed in a consistent and respectful way across the State Service.

State Service Management Office
Department of Premier and Cabinet

If you have any questions relating to this Guide, please contact ssmo@dpac.tas.gov.au

Definitions - For the purpose of Disability Leave

Employee

For the purpose of accessing Disability Leave employee means an employee or officer of the Tasmanian State Service who lives with a disability.

Disability

For the purpose of this Guide and the Disability Leave clause, disability is defined as a long-term physical, mental, cognitive, intellectual or sensory impairment.

Disability Leave

Please refer to the Disability Leave Clause included in this Guide.

Eligibility Process

To be eligible for Disability Leave employees must satisfy the Eligibility process provided at subclause (b) Eligibility; subclause (c) Entitlement; and subclause (d) Notice and Evidence Requirements, of the Disability Leave provision.

Manager/supervisor

The manager or supervisor who has authority to approve Disability Leave and who the employee's leave request is assigned to for approval.

SECTION I

Setting the Context

What is Disability (for the purpose of Disability Leave)?

For the purpose of the Disability Leave provision and this Guide, disability is defined as a long-term physical, mental, cognitive, intellectual or sensory impairment.

A person may be born with a disability or may develop one later in life due to illness, accident, injury, or ageing and not all disabilities are visible. A person's experience of disability is also affected by environmental factors such as community attitudes and the opportunities, services and support they can access, as well as by personal factors.

Noting the above considerations, an application for Disability Leave will be assessed with regard to the personal circumstances of the employee and their request for leave.

Impacts of Disability

The impacts felt by people with disability are wide ranging and depend on the type and severity of the disability. While many people living with a disability routinely and actively participate in all areas of life, others face challenges to do so and are more likely to experience poor health, discrimination, and violence than those without disability. Disability exists on a spectrum and each person experiences disability in a unique way requiring different practice approaches and supports specific to their needs.

It is recognised that over the duration of their employment in the TSS, an employee who lives with a long-term physical or psychological disability may have an increased need to be absent from the workplace to attend appointments or undertake other activities associated with their disability.

Disability Leave is provided to recognise these challenges and provide a supportive work environment and more equitable employment opportunities for TSS employees living with a disability.

Purpose of the Guide

This Guide has been designed as a comprehensive, informative, and credible resource to support managers, supervisors and employee to understand the TSS Disability Leave provisions for managers and supervisors to make informed, respectful, and unbiased decisions in relation to requests for Disability Leave from employees.

The person who understands the most about an employees' disability and their needs is the employee themselves and their treating medical professional. Many people will have a disability at some stage in their lives. For some, the disability will be temporary. Others may be affected in some capacity for a lifetime. Reasonable adjustments and flexible work practices must be considered to ensure a person living with a disability are supported and that they can meaningfully participate in all aspects of their employment and express their views.

SECTION 2

The Disability Leave Provision

Overview

Disability Leave enables an employee who lives with a disability to be absent from work for the purpose of activities associated with a long-term physical or psychological disability.

These activities may include attending appointments, treatment, or rehabilitation, or obtaining, maintaining or replacement personal equipment. This list is not exhaustive and employees and managers should refer to subclause (c)(v) of the Disability Leave provision for further information. Managers will assess each application for Disability Leave having regard to the personal circumstances of the employee and their request for leave.

An eligible employee (except for a casual employee) is entitled to five days of paid disability leave per personal leave year. Leave may be taken for a period of days or for part of a single day. To facilitate travel time and recovery, the period of leave accessed may also be greater than the duration of the activity which forms the subject of the leave request.

A casual employee is entitled to leave work or be unavailable to attend work, subject to the provisions set out at subclause (g) of the Disability Leave provision.

Disability Leave is separate and distinct entitlement from Personal Leave and is not to be used in substitution. An employee who lives with a disability may access Disability Leave for activities associated with that disability, in accordance with the provision. Where the employee is unable to attend work due to an illness related to their disability, they may access personal leave entitlements in accordance with the relevant award or agreement provision.

SECTION 3

Supporting Information for managers

A psychologically safe conversation

All employees should feel safe, supported, respected, and included at work. When an employee with a disability talk to their manager about their plan to access Disability Leave, the intent of the entitlement is that it should be able to be accessed in a consistent and respectful way across the State Service.

Disability can be highly misunderstood leading to unjust impacts on people living with disability. It is important to strengthen our understanding of disability and the impacts it can have. Each person living with a disability is unique and will require different support. Managers should work with employees to encourage safe and open conversations that provides a psychologically safe environment so they can discuss the best way to support them. The Disability Leave Guide is a reference as to how to support an employee living with a disability access the leave entitlement. Further support may also be offered dependent on what the employee requires. See the [Workplace support and adjustments](#) page in the [Disability Employment Portal](#) on the Tasmanian Government Jobs website for more information.

It is important to think about the sensitivities before entering a conversation with an employee, regardless of the reasons. i.e. you need to ask the employee to provide further information, demonstrate eligibility or discuss alternative arrangements if the leave application may not be approved.

Be mindful of your language. Your words and meaning may come across differently to that of your intent. Think of the impact.

What does 'long-term' mean?

The Disability Leave provision defines disability as a long-term physical, mental, cognitive, intellectual, or sensory impairment. The provision does not define 'long-term' for this purpose and a restrictive definition should not be implied. Disability is an individual experience which can differ greatly from one person to the next. As discussed below, a flexible approach to the definition of long-term disability supports the intended outcomes of the provision.

Overarching objective

Over the duration of their working life, an employee who lives with a long-term physical, mental, cognitive, intellectual, or sensory impairment may have an increased need to be unavailable to attend work due to the requirement to attend appointments or undertake other activities associated with their disability. This may present additional challenges when seeking or maintaining employment.

An overarching objective of Disability Leave is to recognise these challenges and provide a supportive work environment and more equitable employment opportunities for employees who live with a disability.

Managers should be mindful of the overarching objective of the Disability Leave provision, as outlined above, when determining an application for Disability Leave.

Additionally, the long-term nature of an employee's physical, mental, cognitive, intellectual, or sensory impairment may not always be immediately apparent. A manager should exercise discretion when determining an application for Disability Leave.

Where the nature of an employee's disability is one which is likely to present additional challenges over their working life, this may suggest the disability is one which the Disability Leave clause provides for. In light of these considerations and with regard to the personal circumstances of the employee, their disability and the request for leave, a manager may preempt the long-term nature of the person's disability.

Further information to support the Leave application

- Clearly explain the information you need and why, reference the part in the Disability Leave Clause if you think this will assist the employee understand why you are requesting additional information.
- If you need to ask the employee a question/s or clarify information provided
 - Be clear on why you need to ask the question/s
 - If you need to request additional information or gain clarity from the employee, it is important you clearly communicate to the employee that you are not questioning the employee's disability.
 - It is acknowledged that employees have unique needs and that it is important eligibility for Disability Leave is assessed consistently and equitably across the TSS. This is supported by the consistent application of the Disability Leave eligibility criteria by managers.

Please note: If a manager is unsure that the application for Leave fits within the intended purpose of the Disability Leave Provision, they should contact their agency HR team for advice and guidance.

Other Accessible Workplace Support

Accessibility in the workplace is about removing barriers so that everyone has equal access. Some people living with a disability may face barriers at work that can be removed with a simple workplace adjustment on a case-by-case basis such as flexible working or assistive technology. See the [Workplace support and adjustments](#) page in the [Disability Employment Portal](#) on the Tasmanian Government Jobs website for more information.

SECTION 4

Supporting Information for Employees

How to apply for Disability Leave

To apply for Disability Leave, follow the same process in your agency as you would when applying for other forms of leave. Please ensure you have provided your supporting documentary evidence (where appropriate).

Your responsibility

- To provide all the information required to support your application for Disability Leave
 - (i) An employee is to provide notice to the employer at the earliest reasonable opportunity of the request for leave and the length of leave required.
 - (ii) An employee is to make an application to the employer for disability leave accompanied by supporting documentary evidence where appropriate.
 - (iii) Documentary evidence may include any of the following:
 - (1) A medical certificate from a registered health practitioner operating within their scope of practice;
 - (2) A written referral, issued by a registered health practitioner;
 - (3) A statutory declaration;
 - (4) Other reasonable forms of documentation.

Your Rights

- To be given the opportunity to provide to your manager all the relevant information requested for the manager to make an informed decision when considering your application for Disability Leave.
- If you are dissatisfied with a decision made about your application for Disability Leave it is recommended that you discuss this decision with your immediate supervisor in the first instance.

Disability Leave Clause

Disability Leave

- (a) Purpose
 - (i) Disability leave is available to an employee to enable them to be absent from duty for the purpose of activities (including attending appointments) associated with their long-term physical or psychological disability.
- (b) Eligibility
 - (i) Disability leave is available to an employee (except for a casual employee) who lives with a disability.
 - (ii) For the purpose of this clause, disability is defined as a long-term physical, mental, cognitive, intellectual or sensory impairment.
 - (iii) The entitlement for casual employees is provided at subclause (g).
- (c) Entitlement
 - (i) An eligible employee is entitled to paid disability leave of up to five days per personal leave year as specified in Part VIII, Clause 3(c).
 - (ii) Disability leave is non-cumulative and is not paid out on cessation of employment.
 - (iii) Disability leave is available from the first day of appointment.
 - (iv) Disability leave is credited to an employee on the first day of appointment and will be replaced with a new credit on the date upon which each subsequent personal leave year commences.
 - (v) Disability leave is available for the purpose of activities associated with an employee's disability including, but not limited to, any of the following:
 - (1) To attend an appointment with a registered health practitioner.
 - (2) To attend treatment, rehabilitation, therapy or counselling.
 - (3) To attend tests or assessments.
 - (4) To receive delivery of, fitting, repairing, maintaining and undergoing training in use of orthoses, prostheses, adaptive equipment, or other aids.
 - (5) To obtain wheelchair or other equipment or to undertake maintenance or replacement of such equipment.
 - (vi) The period of leave accessed by an employee may be greater than the duration of the activity or appointment to facilitate travel time and recovery.
 - (vii) Disability Leave may be taken for part of a single day.
- (d) Disability leave is not to be used as a substitute for an employee's personal leave entitlement provided in Part VIII, Clause 3.

(e) Notice and Evidence Requirements

- (i) An employee is to provide notice to the employer at the earliest reasonable opportunity of the request for leave and the length of leave required.
- (ii) An employee is to make an application to the employer for disability leave accompanied by supporting documentary evidence where appropriate.
- (iii) Documentary evidence may include any of the following:
 - (1) A medical certificate from a registered health practitioner operating within their scope of practice;
 - (2) A written referral, issued by a registered health practitioner;
 - (3) A statutory declaration;
 - (4) Other reasonable forms of documentation.

(f) Rate of payment

- (i) Disability Leave is paid at the employee's normal salary rate, as defined.

(g) Effect on other entitlements

- (i) Employees who are unable to attend work due to illness related to their disability may utilise personal leave.
- (ii) Disability leave will count as continuous service for all purposes.

(h) Casual employees

- (i) Subject to the notice and evidence requirements in subclause (d) casual employees are entitled to leave work or not be available to attend work, for the purposes of this clause.
- (ii) The employer and an employee are to agree on the period the employee is entitled to not be available to attend work. In the absence of agreement, an employee is entitled to not be available to attend work for up to one working day per occasion.
- (iii) A casual employee is not entitled to any payment for the period of non-attendance.
- (iv) The employer must not fail to re-engage a casual employee because the employee has accessed the entitlement provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.



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