

ABANDONMENT OF EMPLOYMENT AND ABSENCE WITHOUT LEAVE (UNAUTHORISED ABSENCES)

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Authority and Application

Clause 20.4 of the *Victorian Public Service Enterprise Agreement 2020* (Agreement) applies to the Victorian Public Service Departments and Agencies (Employers) covered by the Agreement.

Overview

Abandonment of employment may arise in circumstances where an Employee is absent from work without a reasonable explanation for an unreasonable period of time, without appropriately communicating why, or gaining prior approval for the absence from their Employer.

Clause 20.4 of the Agreement outlines the circumstances in which an Employee may be considered to have abandoned their employment.

Relevant provisions of the VPS Agreement

Clause 20.4 – Abandonment of Employment

Supplementary Guidance Information

1. Employee requirement to notify Employer of reason for an absence from work

- 1.1. An Employee that is absent from work due to:
 - 1.1.1. personal illness or injury; or
 - 1.1.2. being required to provide care or support to an immediate family or household member due to illness or injury; or
 - 1.1.3. an unexpected emergency affecting an immediate family or household member,must give the Employer notice of the period, or expected period, of the absence and their likely return date as soon as practicable and provide appropriate evidence which may be a time after the absence has started.
- 1.2. An Employee that is unable to attend for work for any other reason must provide a reasonable explanation for the absence. Employees must comply with the notice and evidence requirements in the Agreement if they intend to apply for a form of leave to cover the absence.
- 1.3. Where an Employee does not attend work and has not contacted their Employer, it will generally be appropriate for the Employer to try to contact the Employee the same day or the following day, for the purpose of inquiring about the Employee's welfare.

2. Attempts to contact an absent Employee

- 2.1. As soon as the Employer becomes aware of an unexplained absence, it is recommended that they:
 - 2.1.1. seek advice from the local Human Resources or People and Culture Unit (however termed);
 - 2.1.2. access the Employee's contact details; and
 - 2.1.3. make all reasonable attempts to contact the Employee by telephone, email or text message, to enquire about the Employee's welfare and the reason for the absence.
- 2.2. If the Employee does not respond within a reasonable time, it is recommended the Employer attempt to contact the Employee's emergency contact to enquire about the Employee's welfare.
- 2.3. If there is no contact from the Employee or their emergency contact it is recommended the Employer report the Employee's absence to Victoria Police to request a welfare check be undertaken.
- 2.4. Actions under this policy should be handled sensitively, particularly if the circumstances or reasons for the absence are unknown. The Employee may not be able to contact the Employer if they or a member of their immediate family are suffering from an illness or injury, or the Employee could be travelling in an area experiencing a natural disaster, or another unforeseen or unpredictable event may have occurred.

3. Notification of unauthorised absence

- 3.1. If an Employee does not respond to attempts to make contact, the Employer should write to the Employee and ask that they contact the Employer within a reasonable specified timeframe to advise of the reason for the absence and, if possible, the expected period of any further absence.

- 3.2. The Employer should advise the Employee that, the absence is unauthorised until a form of leave is approved, or the Employer otherwise provides permission for the Employee to be absent from work.
- 3.3. All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee's home address. This action should be taken in conjunction with the Employer's Human Resources or People and Culture Unit (however termed).

4. Contact made within specified timeframe – reasonable explanation provided

- 4.1. Where the absent Employee, or another person on the Employee's behalf:
 - 4.1.1. makes contact with the Employer within the specified timeframe referred to in section 3; and
 - 4.1.2. provides a reasonable explanation for the absence, an appropriate form of leave (if any) should be applied to the period of the absence. The leave must comply with any requirements of the Agreement.
- 4.2. If appropriate, the Employee should be reminded of the need to report any future absences in accordance with the Employer's requirements for leave requests and/or notification of absences.
- 4.3. Where the Employee does not feel comfortable discussing the reasons for their absence with their immediate manager, the Employee should contact a more senior manager, the Employer's Human Resources or People and Culture Unit (however termed) or, where relevant, their injury management consultant to discuss the reasons for their absence.
- 4.4. The Employer may provide access to further supports, such as the Employee contacting their Employee Assistance Program (EAP) provider.

5. Confirmation of unauthorised absence

- 5.1. If the Employee:
 - 5.1.1. does not contact the Employer within the specified timeframe referred to in section 3; or
 - 5.1.2. makes contact with the Employer and does not provide a reasonable explanation for the absence;the Employer should confirm in writing to the Employee that the absence is unauthorised and that, by a further specified date, they are required to report for duty or provide a reasonable explanation for their absence and provide appropriate evidence.
- 5.2. The correspondence should:
 - 5.2.1. state that a failure to report for duty or provide a reasonable explanation for the absence may result in the Employer taking further action. This may include action under the misconduct procedures or the Employer treating the unauthorised absence as the Employee having abandoned their employment; and
 - 5.2.2. outline the terms of clause 20.4 of the Agreement.
- 5.3. All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee's home address. This action should be taken in conjunction with the Employer's Human Resources or People and Culture Unit (however termed).
- 5.4. At this point, it is appropriate to consult with the Employer's People and Culture or Human Resources Unit (however termed) about what additional action (if any) should be considered, including whether the Employer should stop paying the Employee for the period of the absence.

6. Employee fails to contact Employer by specified date

- 6.1.** Where the Employee fails to respond to attempts to make contact by the date specified in the correspondence referred to in section 5.1 above, it is recommended that the Employer make a final written attempt to contact the Employee to:
- 6.1.1.** confirm the absence is unauthorised and that they are required to report for duty or provide a reasonable explanation for their absence;
 - 6.1.2.** inform them the unauthorised absence is inconsistent with the continuation of their employment and is being treated as an abandonment of employment;
 - 6.1.3.** confirm that abandonment of employment constitutes grounds for termination of employment by the Employer;
 - 6.1.4.** provide a final specified date the Employee may:
 - a. attend for duty, or
 - b. provide a reasonable explanation for their absence, before their employment is terminated.
- 6.2.** All reasonable attempts should be made to ensure the Employee receives the correspondence. It is recommended the letter be sent by a delivery method that registers receipt (for example, registered mail or express post) to the Employee's home address.
- 6.3.** Any such action should be taken in consultation with the Employer's Human Resources or People and Culture Unit (however termed) and in accordance with the organisation's delegations.
- 6.4.** If the Employee does make contact with the Employer at this stage and does not provide a reasonable explanation for the absence, the Employer may take further action under clause 25 – Management of Misconduct due to the Employee's unauthorised absence

7. Abandonment of employment – confirmation of termination of employment

- 7.1.** Where an employee fails to attend duty or provide a reasonable explanation for their absence, an Employer is entitled to regard the employment of an Employee as abandoned if:
- 7.1.1.** the Employee has been absent for more than 20 working days without the approval of the Employer; and
 - 7.1.2.** the Employee has not provided the Employer with a reasonable explanation and appropriate evidence for their absence by the date specified in section 6; and
 - 7.1.3.** the Employer, after having made reasonable inquiries, could not reasonably be aware of any reasonable grounds for the absence.
- 7.2.** The Employer should write to the Employee to confirm that abandonment of employment constitutes grounds for termination and that the employment is terminated effective from the date specified in the correspondence.
- 7.3.** The Employer must provide the minimum period of notice of termination, or make a payment in lieu of notice, in accordance with clause 20.2 of the Agreement. The Employer must pay the Employee accrued leave entitlements that are payable on termination under the Agreement.
- 7.4.** If the Employer makes a payment in lieu of notice, payment should be from the date the letter is signed or the date it is received by the Employee, whichever is the later. If the correspondence is sent by post, the date the termination takes effect should be the date the letter is expected to be delivered to the Employee.
- 7.5.** The Employer should make all reasonable attempts to ensure the Employee receives the correspondence and, where possible, should include a delivery receipt for record keeping purposes.

- 7.6. There may be additional legal obligations for dealing with a termination of employment that are not addressed by clause 20.4 of the Agreement. The Employer should ensure that the reasons, and process leading to, the termination are consistent with their obligations under unfair dismissal, general protections, the National Employment Standards and other employment and industrial laws.
- 7.7. A decision to declare an Employee as having abandoned their employment should be taken by the authorised delegate in conjunction with the Employer’s Human Resources or People and Culture Unit (however termed).
- 8. Record keeping**
- 8.1. It is recommended the Employer keep records of their attempts to contact the Employee, for example, diary or file notes, email delivery receipts, registered mail receipts, screenshots of text messages and courier documents.
- 8.2. Copies of letters and all formal correspondence should be placed on the Employee’s personnel file.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Managers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 20.4 may apply for a review of actions under the Review of Actions/Grievance Policy. The dispute resolution process under clause under clause 13 will only apply prior to any termination of employment.

Further Information

For further information and advice please contact your Human Resources or People and Culture Unit (however named).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Personal/Carers Leave
- Review of Actions/Grievance
- Management of Misconduct

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

VPS Code of Conduct

The Code can be found at <https://vpssc.vic.gov.au/resources/code-of-conduct-for-employees/>

Authorised by Industrial Relations Victoria:

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