



DYHRBERG DRAYTON
EMPLOYMENT LAW

What's New Update: August 2018

Domestic Violence – Victims' Protection Act 2016

The Domestic Violence – Victims' Protection Bill (the **Bill**) recently passed its third reading in Parliament. From April 2019, when the changes take effect, victims of domestic violence will be provided enhanced workplace rights and entitlements.

The Bill makes three key changes to employees' rights and entitlements:

- creating a new ground for requesting flexible work arrangements;
- creating a new type of leave; and
- making it illegal to discriminate against victims of domestic violence.

New Ground for flexible working - Changes to the Employment Relations Act 2000

Under the changes, employees who are affected by domestic violence will have a statutory right to make requests for short term variations, of two months or less, to their working arrangements.

Requested variations could include:

- Work location;
- Duties;
- Extent of contact details provided to the employer; and
- Any other term of the employee's employment.

While the requests are limited to periods of two months, employees will still be able to make requests for variations of a longer duration under the current flexible working provisions of the Employment Relations Act 2000 (Part 6AA).

Requests for a short term variation of working arrangements must be in writing, and must state:

- the employee's name;
- the date of request;
- that the request is made under the domestic violence provisions of the Employment Relations Act (Part 6AB);
- what variations are requested;
- the requested date of variation;
- how the variation will assist the employee; and
- how the proposed variation would affect the employer.

Employers must respond to a request within 10 working days, including providing the employee with information about specialist domestic violence support services. Specialist domestic violence support services is not defined by the Bill. Any refusal to accept the requested variation must be accompanied with an explanation justifying the decision.

Under the Bill, employers will be entitled to request proof the employee is affected by domestic violence. If the employer requires proof before making its decision, it must notify the employee of the requirement no later than three days after receiving the request. It is currently unclear what proof an employee must provide to show they're being affected by domestic violence, particularly when that violence is not physical. Employers will need to exercise discretion and care when requiring proof, given the potential privacy issues that could be associated with such information.



Domestic Violence Leave - Changes to the Holidays Act 2000

Employees affected by domestic violence will also be entitled to up to 10 days' leave per year for the purpose of helping them deal with the effects of domestic violence. An employee's entitlement to domestic violence leave will arise in the same manner as sick leave, i.e. after six months' continuous service with the employer. However, the entitlement will not carry over, meaning domestic violence leave is limited to 10 days every 12 months, unless an employer offers additional leave (as some employers have already chosen to do).

As with requests for flexible work arrangements, an employer may require proof an employee is affected by domestic violence before making payments for domestic violence leave.

Like other leave entitlements such as sick leave and annual leave, domestic violence leave does not need to be taken all at once and can be taken in separate blocks.

Summary

While the Bill does not come into force until **1 April 2019**, employers should review their employment agreements, policies, and practices, prior to that date to ensure they are prepared and able to respond to any requests for flexible work arrangements as a result of domestic violence and/or periods of domestic violence leave.

A great example of employers doing what they can to help victims of domestic violence is a tool developed by The Warehouse, in association with Women's Refuge. They have created a '*shielded*' website allowing victims to seek information online under the guise of browsing The Warehouse website. The tool can be accessed by members of the public by clicking the icon on the bottom of the Warehouse webpage.

Please contact us if you need help ensuring your employment practices are kept up-to-date, or if you're looking for tools and information to provide to your employees. We would be happy to assist.