

NEW ENTITLEMENT TO FAMILY & DOMESTIC VIOLENCE LEAVE

On 1 August 2018, an entitlement to family and domestic violence leave was introduced in Australia for the first time into almost all modern awards. The introduction is designed to assist the many Australian workers who may sadly experience family and domestic violence in their lives. While at this stage the entitlement only applies to the approximate 2.3 million workers who are subject to a modern award, the Commonwealth Government has indicated it intends to introduce legislation to provide this entitlement to all employees who fall under the Fair Work Act in the near future.

The Entitlement to Family and Domestic Violence Leave

Under the new standard award clause, employees are entitled to five days unpaid leave if:

- the employee is experiencing family and domestic violence; and
- needs to do something to deal with the impact of that violence which is impractical for the employee to do outside their ordinary hours of work.

For example, an employee may need to make arrangements for their safety or the safety of a family member, attend an urgent court hearing, or access police services.

The term “family and domestic violence” is defined as “violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful”.

The leave is available to employees in full at the beginning of each 12 month period of employment, and does not accumulate from year to year. Importantly, the entitlement is available in full to full-time, part-time and casual employees.

To take the leave, an employee must give their employer notice as soon as practicable. The notice should include the period, or expected period, of the leave. An employer may require an employee to provide reasonable evidence to substantiate the taking of the leave, for example a statutory declaration or a document issued by a police service or court service.

Employers must take steps to ensure that any information provided by an employee regarding the taking of family and domestic violence leave is treated confidentially as far as reasonably practicable.

Implications for Employers

Employers who have workers subject to a modern award must provide the above entitlement to those employees as necessary from 1 August 2018 onwards. Employers should review their current employment contracts and leave policies to ensure they reflect the new entitlement. A failure by an employer to provide the new entitlement in accordance with an applicable modern award will be exposed to a range of sanctions, including civil penalties of up to \$63,000 per breach for corporations.

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