

Fair Work Commission rules on Family Domestic Violence Leave as part of Modern Award Review

Domestic violence is an issue that may occur without the employer's knowledge and can impact on the mental state and performance of affected employees. Historically, employees have not had a special entitlement to leave if they suffer family or domestic abuse at home and as such there has been a push by the unions in recent times to have family and domestic violence leave included in all modern awards.

In 2017 the Fair Work Commission (FWC) dismissed a claim by the Australian Council of Trade Union (ACTU) that employees should receive 10 days of paid family and domestic violence leave. However, the FWC formed a preliminary view that all employees should have access to unpaid family and domestic violence leave.

The Full Bench subsequently confirmed this view in a decision released on 26 March 2018 and ruled that a period of five day's unpaid leave per annum should be available to all employees dealing with family and domestic violence.

The entitlement will apply to all employees (including casuals) and be available in full at the commencement of each 12 month period. The FWC has decided the 5 days of unpaid leave will not be pro-rated and not accumulated from year to year.

A model term has been drafted to give effect to the decision of the Full Bench and all interested parties have been invited to provide comment before it is introduced.

If you are uncertain how these amendments will affect your business, please contact the VANA Employment Relations Team on (02) 9083 0091.

However, the family and domestic violence leave debate is not over, with the FWC stating it will be examined again in 2021 to focus on whether there should be an entitlement to paid leave in all modern awards.

Fair Work Commission delivers provisional view on Family Friendly Work Arrangements:

As part of the four yearly modern award review, unions have been actively campaigning for amendments to all awards to provide greater flexibility for employees with child care and caring responsibilities.

Earlier this year a Full Bench from the FWC rejected a claim by the ACTU for employees with parenting or caring responsibilities to have *enforceable* rights to request part time or reduced hours. The rights would be greater than the existing rights to request flexible working arrangement under the National Employment Standards.

Whilst rejecting the initial claim, the Full Bench expressed a provisional view that all awards should be amended to include a model term for flexible working arrangements to facilitate discussion between employers and employees about such arrangements.

The FWC has emphasised that this is only a provisional view and have invited interested parties to make submissions on issues. These issues include, but are not limited to, the exact terms of the model term and whether the inclusion of the provisional model term will result in modern awards that only include terms to the extent necessary to achieve the modern awards objective.

Once responses have been received, the Fair Work Commission will consider whether or not to proceed with the provisional model.

If you would like further information on flexible working arrangements that currently exist in the National Employment Standards or to discuss the modern award review process further please contact the VANA Employment Relations Team on (02) 9083 0091.

Workplace training – What you need to know.

From time to time employers may require their staff to undertake training to make sure they have the right skills and knowledge to perform their job. An important question that often arises is whether employees need to be paid for time spent training, and if so, what are they paid?

Employees have to be paid the right rate of pay for all time worked, including time spent at compulsory training, opening and closing the business, and working unreasonable trial shifts.

Whether an employee needs to be paid for their training is determined by assessing whether or not the employee has an obligation to attend the training and therefore the time is considered “working time.”

Voluntary training or meetings do not have to be paid as employees are given the choice as to whether they wish to attend. If the employee has an obligation to attend the training or meeting and make themselves available to the business, the employee will need to be paid for their attendance.

If the training is not voluntary it is important you also consider the duration of the meeting and the minimum engagement periods under the relevant award. If the training will only last an hour under the *General Retail Industry Award* the minimum daily engagement for a casual and part-time employees is 3 hours.

It is not acceptable for employees to be paid in food, drinks or store goods. Even if it is only for a brief 30 minute compulsory meeting. If it is compulsory for an employee to be at work, they need to be paid the applicable wages under the award, subject to any penalties and overtime hourly rate for that time and their minimum daily engagement period.

If you are having trouble understanding your obligations as an employer or need additional help and support, please contact the VANA Employment Relations Team on (02) 9083 0091.