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Lawyers**

Changes to employment law in 2019

DOMESTIC VIOLENCE – VICTIMS' PROTECTION ACT 2018

The Domestic Violence – Victims' Protection Act 2018 amends the Employment Relations Act 2000 and the Holidays Act 2003. This Act comes into force on 1 April 2019.

The Act grants employees affected by domestic violence up to 10 days leave each year, and enables them to access short-term (2 months or shorter) flexible working arrangements. Flexible working arrangements include changes to work location, hours, duties, and contact details.



A person affected by domestic violence is as commonly understood. Broadly speaking, anyone who has been or is subject to violence (physical, sexual or psychological abuse) by a member of their family or household, or someone they are in a domestic relationship with, is a victim of domestic violence.

An employee who is a victim of domestic violence can submit a request to their employer for up to 10 days leave, and flexible working arrangements. A request to an employer for a short-term variation of working arrangements must be made in writing, and can be made by the employee or on the employee's behalf. There is no time limit on when an employee affected by domestic violence can subsequently request domestic violence leave. The domestic violence may have occurred a significant period of time before any request is made, and in some cases, the domestic violence may have occurred before the employee started work.

The employer may refuse the request if proof of domestic violence is requested and not provided. Proof of domestic violence must be sought by the employer within 3 working days after the request is received. What will constitute proof has been left undefined and may be especially difficult to procure for someone who has been subject to psychological abuse.

Note, the Act is silent on privacy. It doesn't specify to whom requests for leave or flexible arrangements should be made, or what information is recorded or shared (such as to payroll or on payslips). This may be something to be aware of in practice, and guidance should be provided to employees. Guidance may include requests going to a specific person within an organisation, such as the individual's manager. That person should be briefed on the strict confidentiality requirements for this role, and your employment agreements should be updated to reflect the changes.

EMPLOYMENT RELATIONS AMENDMENT ACT 2018

Several key amendments to the Employment Relations Act 2000 come into force on 6 May 2019:

90 day trial periods

90 day trial periods will once again be restricted to businesses with less than 20 employees. Businesses with 20 or more employees can continue to use probationary periods to assess an employee's skills against their suitability for a role. Probationary periods require, and commonly set out a fair process for managing performance issues and ending employment if these issues are not resolved.



Unfortunately, probationary periods leave the door open for personal grievances if any steps taken under them are not procedurally fair, or in accordance with the terms set out in the probationary clause. Employers need to be aware of this when relying on probationary period clauses in employment agreements.

If you intend using probationary periods, we recommend careful drafting of the clause, and strict adherence to its provisions, should any action or steps be required to be taken under that clause.

Rest and meal breaks

The right to minimum rest and meal breaks will be set according to the number and duration of hours worked. For example, an 8-hour work day must include 2 10-minute rest breaks (paid) and one 30-minute meal break (unpaid). A 4-hour work day must include one 10-minute rest break.

Timing of rest and meal breaks must either be agreed with, or specified by the employer. If a rest time cannot be agreed, breaks should be taken periodically and evenly spread throughout the shift.

Issues will no doubt arise for employers who only roster on one employee per shift, and as such, employees taking breaks means that a business' premises may be left unmanned. This appears not to have been well thought through by the legislative drafters. Hopefully, a common sense approach will prevail.

Collective Bargaining Framework and Union Rights

Changes already in place:

Union representatives can access the workplace without consent where a collective agreement is in force or bargaining is taking place.

Unions are able to initiate bargaining 60 days before the collective agreement expires.

Employers can no longer opt out of bargaining for a Multi-Employer Collective Agreement (MECA), however, there is no duty to conclude a MECA.

Changes in force on 6 May 2019:

Union delegates will be entitled to reasonable paid time off to represent employees.

The duty of good faith will require parties bargaining for a collective employment agreement to conclude a collective employment agreement.

The rates of wages and salary will be required to be included in collective employment agreements.

Employers' obligations to prospective and new employees who are not union members will be changing, including a duty to pass union information.

Changes coming into force in June 2019:

Union membership status will become a prohibited ground of discrimination.

Other Changes

All businesses taking over a contract involving 'vulnerable' employees will have to employ the people currently doing the work on the same terms and conditions. (*Comes into force 6 May 2019*)

CONCLUSION

Many changes to employment law are about to come into force. Changes to employment agreements will be required to include and reflect these developments.

If you have any questions about the new employment law updates, or if you would like updated clauses for your employment agreements, please contact [Jaesen Sumner](#), [Sally Dickison](#) or [Nina Jirkowsky](#).
