



HR NEWS

Domestic Violence Victim's Protection Act – rights and obligations

The Domestic Violence Victims' Protection Act 2018 (the Act) has received Royal Assent and comes into effect from 1 April 2019. Domestic violence has a damaging impact on victims' lives. The Act enhances legal protections for victims and recognises the harm experienced and the influence that the workplace has in helping support victims to stay in employment and find a pathway out of violence and successfully rebuild their lives.

Domestic Violence Leave

There is now a new category of leave under the Holidays Act 2003, which is distinct from annual, sick and bereavement leave entitlements. An employee who is "affected by domestic violence" can take up to 10 days paid domestic violence leave per year. This is a minimum entitlement so an employer can contractually provide for greater entitlements.

Like sick leave, the entitlement to domestic violence leave only arises after an employee has completed 6 months continuous employment. The entitlement then applies for the following 12 month period and every subsequent 12 month period of continuous employment. Unlike sick leave, domestic violence leave does not accrue and cannot be carried forward, but as with sick leave similar notification requirements apply.

If an employee is already taking annual leave, they can convert that leave into domestic violence leave. Similarly, bereavement or sick leave that the employee would otherwise have taken can instead be taken as domestic violence leave.

Affected by Domestic Violence

A person is affected by domestic violence if:

- They are a person against whom any other person inflicts, or has inflicted, domestic violence; and/or
- A person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted, domestic violence.

Time Limits and Proof

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.

An employer may require proof that their employee is a person affected by domestic violence, but can only require proof if they advise the employee as early as possible and no later than 3 working days after they receive the request. In the absence of reasonable proof, there will be no requirement to pay for any domestic violence leave.

Flexible Working Arrangements

Significantly, an employee affected by domestic violence is also entitled to seek flexible working arrangements, for a short-term period of no more than 2 months. Any request for flexible working arrangements can be made by the employee or by somebody else on their behalf. A request must be in writing and must be dealt with as soon as possible, but no later than 10 working days after receipt of the request

Refusal

Proof may be required by an employer if a request is made for flexible working arrangements. Failure to provide that proof is one of the grounds that an employer can rely on in refusing a request. The other ground is that the employer cannot reasonably accommodate the request because of:

- an inability to reorganise work among existing staff; or
- an inability to recruit additional staff; or
- detrimental impact on quality; or
- detrimental impact on performance; or
- insufficiency of work during the periods the employee proposes to work; or
- planned structural changes; or
- burden of additional costs; or
- detrimental effect on the employer's ability to meet customer demand.

Written Requests

A written request for flexible arrangements has certain prescriptive requirements that must be met, including the date on which the employee proposes that the variation take effect and the date on which it will end; how, in the employee's view the variation will assist the employee to deal with the effects of domestic violence; and an explanation as to what changes the employer may need to make if the employee's request is approved.

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