



Fair Work Legislation (Secure Jobs, Better Pay) Act 2022 Update

Navigating the changes to flexible work requests

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Introduction

For some time now employees who have worked for the same employer for at least 12 months can request flexible working arrangements.

As part of the changes to the Fair Work Legislation (Secure Jobs, Better Pay) Act 2022, those employees that are eligible to request flexible work arrangements will be expanded.

These changes will come into effect on June 6, 2023.

To help you to stay ahead of the changes we have prepared this handy guide.

We hope you find it helpful.



Prior to the changes on 6 June, 2023

Employees can request changes to:



- hours of work (for example, changes to start and finish times)
- patterns of work (for example, split shifts or job sharing)
- locations of work (for example, working from home).
- Employees covered by an award also have some extra entitlements when asking for flexible working arrangements.



Who can request flexible working arrangements?

Employees (other than casual employees) who have worked with the same employer for at least 12 months can request flexible working arrangements if they:

- are the parent, or have responsibility for the care, of a child who is school aged or younger
- are a carer (under the Carer Recognition Act 2010)
- have a disability
- are 55 or older
- are experiencing violence from a member of the employee's family, or
- provide care or support to a member of their household or immediate family who requires care or support because that person is experiencing violence from their family.

Flexible work requests - New persons eligible

From 6 June 2023, the group of employees who are eligible to request flexible work arrangements will be expanded to include employees who are pregnant and employees who experience family or domestic violence.

When a flexible work request is made, there will also be new obligations on employers for how they must respond to the request and limits on reasons for why a request can be refused.

Employers will be required to discuss the request with the employee, make a genuine effort to find alternative arrangements to accommodate the employee's circumstances, consider the consequences of refusal for the employee, and provide a written response that includes an explanation of the reasonable business grounds for refusing the request.

The response will need to include the grounds that apply to the request, other changes the employer is willing to make that would accommodate the employee's circumstances, and information about referring a dispute to the Fair Work Commission.





Unpaid parental leave requests

Similar to the way in which flexible work requests must be handled under the new regime, there is also a new regime for responding to a request for an extension of unpaid parental leave for a further period of 12 months (resulting in the total leave period of 24 months).

The Act requires that the employer respond to the request within 21 days, that there is consultation with the employee about the request and a genuine attempt to reach agreement.

What should employers now do when a flexible work request or a request to extend parental leave is made?

1.

Note the date the request was made and diarise to ensure that a response is provided to the employee within 21 days.

2.

Consider whether the request can be approved, or whether a variation to the request can be offered, or whether the request may need to be refused.

3.

The employer should then contact the employee to consult with and discuss the request. This consultation can be over the phone, in person or in writing through emails or letters

4.

If the request is to be refused, the employer should send a letter to the employee advising of the refusal and explaining the reason for the refusal. The letter should also inform the employee of their right to approach the Fair Work Commission.

Generally, employers should review and revise their processes for dealing with flexible work requests and requests for extended parental leave.



Managers should be educated on the new regime including the time limit they have to respond and the steps that need to be taken to ensure that the requirements of the Act are complied with, especially if the request is being refused.



Author bio

About Anika Fleet & WMD Law

Anika is a commercial law and litigation principal at WMD Law. WMD Law have a large team of lawyers to cover commercial law, litigation, property law, family law, estate planning, estate litigation and criminal law. WMD Law have offices in NSW including in Sutherland, Sydney CBD, Bega and Merimbula and they assist clients throughout Australia via video conference or teleconference.

Anika's commercial law work sees her acting for businesses in a wide range of commercial transactions as well as drafting and providing contract advice on all types of agreements. She practices in litigation where she helps clients navigate the court system in commercial or civil disputes. As part of her commercial law and litigation work, she represents employers and employees by providing employment law advice and acting in disputes. Anika is passionate about providing strategic, commercially-focused advice to help clients achieve the outcome they desire.

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