

Proposed Amendments to the Fair Work Act

The *Fair Work Amendment Bill 2013* includes changes regarding workplace bullying, union right of entry, parental entitlements, and remuneration for employees working outside normal hours. If this bill is passed, it will significantly amend the *Fair Work Act 2009*.

Workplace Bullying

Under the proposed amendments, a worker who is bullied at work will be able to apply to the Fair Work Commission (FWC) for an order to stop the bullying. The FWC does not currently have any anti-bullying jurisdiction.

The term “worker” includes a broad range of individuals, such as employees, contractors, subcontractors, outworkers, apprentices, trainees and work experience students. An employer can be liable for any the behaviour of any person bullying a worker at the workplace, including visitors.

The FWC may make any order it considers appropriate, except for orders for reinstatement or the payment of compensation. Examples of orders include:

- Requiring an individual or group to stop specified behaviour;
- Monitoring compliance with an employer’s workplace bullying policy, or requiring a review of such a policy;
- An order for the provision of information and training to workers on bullying issues.

Any anti-bullying order made by the FWC will be enforceable in civil remedy proceedings. A breach of an order may attract significant pecuniary penalties.

Union Right of Entry

The Amendment Bill also enables the FWC to deal with disputes about union rights of entry. If the FWC is satisfied that the frequency of visits by a union or permit holder “would require an unreasonable diversion of the occupier’s critical resources”, then it can make any order it considers appropriate, such as restricting, suspecting or revoking a union official’s right of entry permit.

However, if the Bill is passed, an employer will also have new obligations in relation to a union official’s right of entry. Since 1 July 2009, a union official has been able to force entry to a workplace, even if the union has no members at that site, simply to hold discussions with employees who are eligible to join that official’s union. Under the new amendments, a union official will be able to hold discussions with employees in the workers’ lunch rooms – an area that is currently off-limits to union officials – provided that an agreement could not be reached about another location for the discussions.

Furthermore, if a union official wants to force entry to a workplace in a remote area where transport or accommodation is not reasonably unavailable, the employer will be obligated to arrange transport and accommodation for them.

Parental Leave

Currently, the maximum amount of concurrent unpaid parental leave two parents can take is three weeks. The Amendment Bill will increase this entitlement to eight weeks. The Bill also allows parents to take the leave in separate blocks of at least two weeks each at any time within the first 12 months of the birth or adoption of the child.

Entitlements for Pregnant Employees

Under the Amendment Bill pregnant employees are entitled to take unpaid special maternity leave in addition to their unpaid parental leave entitlements. Currently, a period of unpaid special maternity leave is offset against the employee’s 12-month period of parental leave.

All pregnant employees will also have the right to transfer to a safe job if they cannot continue in their usual role due to an illness or risk arising from pregnant. At present, this right only exists for pregnant employees who have completed 12 months' continuous service with their employer. The Amendment Bill will also provide for situations where there is no appropriate safe job for a pregnant employee to be transferred to.

Flexible Working Arrangements

Currently, the right to request flexible working arrangements is available only to parents of pre-school children or children under the age of 18 with a disability.

The Amendment Bill extends this right to employees who:

- Are parents of, or have caring responsibilities for, children of school age or younger;
- Are carers;
- Have a disability;
- Are aged 55 or older; or
- Are experiencing family violence, or providing care or support to another member of the employee's family/household who are experiencing family violence.

An employee returning from parental leave will also have an explicit right to request part-time hours.

The Bill also defines the "reasonable business grounds" upon which an employer may refuse an employee's request for flexible working arrangements.

Protection from Changing Rosters at Short Notice

At present, consultation clauses in awards and agreements must provide for consultation by an employer with its employees about major workplace changes including proposals for restructuring or redundancies.

Under the proposed amendments, consultation clauses in awards and agreements must require an employer to provide employees with information about changes to their roster or hours of work and consult with employees on the impact any changes will have, including on the employee's family and caring responsibilities.

The amendments are intended to promote discussion and genuine consultation between employers and employees about work hours and rosters.