



INTERACTION

KEEP UP WITH RECENT IR CHANGES

Equality, remuneration and flexible working

Interaction Opinion

The changes to unpaid parental leave, flexible working arrangements and the introduction of expert panels and pay secrecy prohibitions have been made with a view to, among other things, promote and achieve gender equality in the workplace. In addition, gender equality is now enshrined as an object of the Fair Work Act, meaning the Fair Work Commission (FWC) must have regard to matters of gender equality when exercising any of its powers and performing its functions.

Here is a comprehensive overview of these changes within the Fair Work Act.

Gender equality

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Expert panels

New expert panels have been introduced within the FWC that aim to tackle low pay and conditions in the female dominated care and community sector and to help attract and retain workers. These panels will provide the FWC with additional expertise in these sectors to enable them to better assess pay and working conditions. The introduction of the Pay Equity Expert Panel, Care and Community Sector Expert Panel and Pay Equity in the Care and Community Sector Expert Panel will make it easier for the FWC to order pay increases for workers in industries that are low-paid, and female dominated.

Pay secrecy

A new workplace right has been added to the Fair Work Act that allows employees to ask other employees about, and disclose their own, remuneration and relevant conditions of employment, such as hours of work. This allows employees to use this information to determine whether their remuneration is

fair and comparable to others in the same workplace and/or industry. Employees cannot be compelled to disclose information about their remuneration and retain the right not to share this information if they do not want to.

As the right to disclose and ask about pay and conditions is a workplace right, an employer will breach the general protections provisions of the Fair Work Act if they take adverse action against employees for doing so.

Existing pay secrecy clauses in employment contracts or other industrial instruments are now of no effect, meaning they are effectively severed from the contracts. Employers are prohibited from entering into any new contracts that contain pay secrecy clauses, with civil penalties applicable where this prohibition is not complied with.

This does not extend to contractor/consulting arrangements nor to release agreements.

Flexible working arrangements

Family and domestic violence and pregnancy have been added to the existing flexible working arrangements provisions allowing employees to make requests in these circumstances.

Starting 1 February 2023, you'll need to provide 10 days of paid leave per year for employees experiencing family and domestic violence. Keep in mind that this leave applies to various relationships, and you should handle information carefully to protect employee privacy.

Right to dispute flexible work request denials

Some employees can now dispute flexible work request denials at the FWC. Consider navigating the definition of "reasonable grounds" to refuse such requests and think about offering flexibility to attract and retain top talent.

The employer is required to discuss the request with the employee and genuinely try to reach an agreement before refusing a request.

Only after taking these steps can an employer refuse a request, on account of reasonable business grounds (which are unchanged), which must be done having regard to the consequences of the refusal for the employee.

To refuse a request for flexible working arrangements, an employer must:

- Discuss the request and genuinely try to reach agreement with the employee about other changes that can be made to accommodate their circumstances
- Consider the consequences of the refusal for the employee
- Refuse only on reasonable business grounds
- Provide the refusal in writing, including the details of the reasons for refusal and any other changes the employer would be willing to make that could accommodate the employee's circumstances.

You will also need to further explain and particularise its reason for refusing a request and include the extent of changes that the employer could support (if any). The refusal must also outline the new dispute and arbitration options.

The FWC will be empowered to deal with disputes about flexible working arrangements, including by arbitration where an order could be made to affirm the refusal, grant the employee's request or make other changes to accommodate the employee.

For those dealing with Modern Award based flexible working requests, this is more of the same.

Unpaid parental leave

Additional requirements have been added for an employer to refuse a request to extend unpaid parental leave.

When an employee makes a request to extend a period of unpaid parental leave, employers must discuss the request with them, and if they refuse the request, must provide the reasons for refusal in writing. If there is a different extension period that the employer can agree to or is willing to consider, the employee should be informed of this in the written notice.

The FWC will be empowered to deal with disputes about refusing to extend unpaid parental leave, including by conciliation, mediation, or arbitration.

Managing the IR changes

We know that the recent IR changes and employment law developments in Australia might seem overwhelming, but with a bit of understanding and the right approach, you can maintain a compliant, productive, positive workplace. Stay ahead of these changes by:

- Consulting with legal or HR professionals to ensure compliance with evolving regulations around contractor classification, whistle-blower protections, and workplace harassment
- Developing comprehensive policies and training programs to inform employees of their rights and protections, and foster a culture of respect and accountability
- Regularly reviewing and updating internal processes for handling complaints and resolving disputes to maintain a safe and compliant work environment
- Ensuring to review standard form employment contract precedents, revisit practices for handling flexible working arrangement requests, and examine fixed-term contract practices in light of the new rules
- Periodically reviewing and updating standard employment contracts to reflect changes in legislation and best practices
- Ensuring HR and management staff are trained in handling flexible work requests and implementing fixed-term contract practices
- Involving legal advisors or HR consultants to help review contracts and ensure compliance with new rules
- Reviewing and updating your flexible work policies to ensure they align with the latest legislative changes
- Training managers on assessing flexible work requests fairly and on the criteria for “reasonable grounds” for refusal
- Monitoring the outcomes of disputes brought to the FWC to learn from industry best practices and maintain a competitive edge in employee retention.

Stay informed and seek assistance

By staying informed and fostering a supportive environment, you and your HR team can successfully navigate these changes and ensure a thriving work culture and a resilient organisation.

And remember, you don't have to face these changes alone. Interaction Consulting is here to assist you in navigating these changes through effective strategy consultation, cultural improvement, and policy support. We're just a call away, ready to help you create a workplace that's compliant, supportive, and ready for the future.

The content of this article is for information only and is not legal advice. Seek legal advice before acting or relying on the content.