

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

This week we review the sometimes confusing employee entitlement to compassionate leave and some upcoming amendments to the employer nominated superannuation default fund administration requirements.

COMPASSIONATE LEAVE

Issues relating to compassionate leave are regularly asked by members. Compassionate leave, often referred to as bereavement leave, can be taken by employees in the event of a death, or life-threatening illness or injury to the employees' immediate family or household. The Fair Work Act defines immediate family as:

- > spouse or former spouse
- > de facto partner or former de facto partner
- > child (including stepchild or adopted child)
- > parent
- > grandparent
- > grandchild
- > sibling, or a
- > child, parent, grandparent, grandchild or sibling of the employee's spouse or de facto partner (or former spouse or de facto partner)

Additionally, since earlier this month the Fair Work Act has been amended whereby compassionate leave can also be taken by employees who experience a miscarriage. Both women and their partners who experience miscarriage will be entitled to up to two days of compassionate leave.

How Long is Compassionate Leave?

Permanent employees can request up to two days compassionate leave (paid at their base rate for the ordinary hours of that period), while casual workers are entitled to up to two days unpaid leave. The days can be taken separately or together. Unlike personal leave, compassionate leave does not accumulate, so it is available to employees whenever required under a permissible occasion.

Can an Employer Refuse Compassionate Leave?

Effectively no, however an employer can require an employee provide notice as soon as practicable and evidence of their absence being for a permissible occasion. Examples of such evidence may be a funeral notice and or an explanation as to their relationship with the person. If the employee fails to comply with those requirements the employer can deny the request for compassionate leave and not pay them for the absence. Members should clarify the notice and evidence requirements in any leave policy or as a standing direction for employees.

STAPLED SUPERANNUATION FUNDS

From 1 November 2021, if members have new employees commence from on or after that date, there will be an extra step to be undertaken so as to comply with choice of fund rules if the new employee does not nominate a super fund. From that date employers will only be able to make superannuation guarantee contributions into an employer nominated default fund if:

IR POLICY AND GOVERNANCE UPDATE



- > a new employee doesn't choose a super fund; and
- > the ATO has advised you that they don't have a 'stapled super fund'.

A stapled super fund is an existing super account which is linked, or 'stapled', to an individual employee so that it follows them as they change jobs.

Employers will be able to request acknowledgement of the existence of an employee's stapled super fund from the ATO after having submitted a 'Tax file number declaration' or a 'Single Touch Payroll pay event' linking the new employee to the business. To make the request your authorised representative needs to:

1. log into ATO online services.
2. enter your employee's details, including their:
 - > TFN – an exemption code can be entered where an employee cannot provide their TFN, but this could result in processing delays.
 - > full name – including 'other given name' if known.
 - > date of birth.
 - > address (residential or postal), if TFN not given.
3. The ATO's online system will then work out and return a stapled super fund in response to a request if one exists.

According to the ATO, the response to the request should be provided on-screen within minutes. If the new employee has a stapled fund the employer must make contributions into that fund. If there is no stapled fund and the employee has not nominated another fund, members can pay superannuation contributions into the employer nominated default fund.

Members Accounting, Payroll, HR and hiring managers should be made aware of this upcoming amendment and the related requirements.

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance at The Real Media Collective via email charles@thermc.com.au or mobile:+61 428 568 032.

DISCLAIMER

The content of this update, current at the date of publication, is intended to provide general guidance and consideration for TRMC Members only. The content does not constitute advice and should not be relied upon as such. Specific advice about your circumstances should be sought separately before taking any action. TRMC recommends Members ensure any related decisions are made on current and up to date information.