

IR POLICY AND GOVERNANCE UPDATE



INTRODUCTION

With this first IR Bulletin for 2023 we enter another year of many and varied workplace relations and compliance related issues. Numerous challenges will need to be addressed this year both in your business and as an industry. We are excited to be your guide and partner in 2023 on the journey of tackling those challenges brought about by various legislative amendments last year, and those forecast to occur this year. In this week's bulletin we cover two of the amendments to the Fair Work Act late last year. One is in place now, and the other will be applicable from next February.

PAY SECRECY CLAUSES INVALIDATED

One of the amendments introduced to the Fair Work Act late last year, and that is now in effect, is the prohibition on 'pay secrecy' in employment relationships. These particular amendments have created two new employee workplace rights. Specifically, employees now have a workplace right to:

- (a) disclose (or not disclose) to others their remuneration or terms and conditions of their employment that are reasonably necessary to determine remuneration outcomes; and
- (b) ask other employees about their remuneration information.

Additionally, employers are prohibited from taking adverse action against employees, including prospective employees, that exercise those workplace rights.

Further, the amendments prohibit employers from including 'pay secrecy' related clauses in employment contracts, and invalidate pre-existing clauses of that type. Additionally, employers are banned from advertising job vacancies with rates of pay that are less than Award or enterprise agreement rates of pay. It is now a civil penalty offence for employers to advertise employment opportunities at a rate of pay that would contravene the Fair Work Act or other applicable industrial instrument, such as a modern award or enterprise agreement.

Considerations for your business

To ensure you minimise falling foul of this recent amendment to the Act, we recommend:

- Ensuring any offers of employment do not contain pay related secrecy clauses.
- Reviewing any related workplace policies and template employment contracts and removing any clauses or references that require pay and remuneration be kept secret.
- Considering how you may respond to an employee who raises a related issue, particularly if that employee queries why they are paid less than another employee undertaking the same role. Is their concern fair and reasonable, or is there a valid basis for the pay difference between employees?
- Conversely, consider how you may respond if an employee raises a grievance over another employee wanting to know their rate of pay.
- When advertising job vacancies within your business, ensure that any mentioned rates of pay and related conditions are compliant with the Fair Work Act and any relevant industrial instrument.

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FAMILY AND DOMESTIC VIOLENCE LEAVE

Another amendment to the Fair Work Act from late last year, and that applies from 1 February this year, are the new entitlement to paid Family and Domestic Violence Leave (FDV Leave). The new laws will replace an employee's existing NES entitlement to 5 days' unpaid family and domestic violence leave in each 12-month period of the employee's employment, with an entitlement to 10 days' paid family and domestic violence leave in each 12-month period of the employee's employment.

The amendments expand the definition of 'family and domestic violence' to mean violent, threatening or other abusive behaviour by an employee's close relative, a current or former intimate partner, or a member of their household that both seeks to coerce or control the employee *and* causes them harm or fear.

Employees will be able to access paid family and domestic violence leave where they are:

- experiencing family and domestic violence; and
- need to do something to deal with the impact of that family and domestic violence and it is not practical for them to do so during work hours.

This could include employees needing to plan for their safety or the safety of a close relative, attending appointments with medical, financial, or legal professionals, accessing police services, or attend court hearings.

The 10 days' paid family and domestic violence leave will come into effect from 1 February 2023 for non-small business employers (those with 15 or more employees) and 1 August 2023 for small business employers (those with less than 15 employees). This leave does not accrue and renews on an employee's 12-month anniversary of employment.

From 1 February 2023, there will also be amendments to the *Fair Work Regulations 2009* introducing rules about how family and domestic violence leave must be recorded on an employee's payslip, to support the employee's safety. Employers will be prohibited from including information on an employee's payslip that shows:

- that an amount paid to an employee or a period of leave taken is for family and domestic violence leave; and
- an employee's paid family and domestic violence leave balance.

Employers should therefore record paid family and domestic violence leave in other ways, such as 'special leave', 'miscellaneous leave', or 'other leave'. The purpose of these amendments is to reduce risks to an employee's safety when they are accessing family and domestic violence leave.

Considerations for your business

Upon commencement of these particular amendments, and given the sensitivity of this issue, members should be mindful that:

- Any information relating to an employee and FDV related issues are treated with confidentiality and not disclosed or used inadvertently.

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- Review any workplace policy to ensure its currency compared to the NES amendments on this issue.
- You are entitled, if necessary, to request an employee provide reasonable evidence of the need to take FDV Leave.
- Your payroll system needs to be set up to record FDV leave appropriately. However, such leave will need to be shown as ‘other’, ‘special’, miscellaneous’ or similar descriptor so as not to refer specifically to FDV Leave.
- From February 2023, any new employees are provided with the updated Fair Work Information Statement from the Fair Work Ombudsman that includes the reference to FDV Leave (we will distribute to members when released by the FWO).

CONTACT

Any Industrial Relations Member who has a related query should contact Charles Watson, GM – IR, Policy and Governance via email charles_watson@pvca.org.au

DISCLAIMER

The content of this update, current at the date of publication, is intended to provide general guidance and consideration for PVCA 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. PVCA recommends Members ensure any related decisions are made on current and up to date information.