



Domestic Violence Victims' Protection Act – Employers, are you ready?

Employment Update

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On 1 April 2019 the Domestic Violence Victims' Protection Act (**Act**) comes into effect. Domestic violence is a serious and complex problem in New Zealand, we have the highest reported rate of family violence in the developed world. The Act aims to protect those employees where the violence may be having an effect on their employment through issues such as substandard performance, tiredness and absenteeism. It also amends the Domestic Violence Act 1995, the Employment Relations Act 2000, the Holidays Act 2003 and the Human Rights Act 1993 with a view to enhancing the legal protection available for victims of domestic violence.

In New Zealand, some large employers already have policies in place to address issues that occur when an employee is affected by domestic violence. However, many New Zealand employers still don't have policies in place to deal with the issues. With the Act coming into effect in April, all employers need to act swiftly to ensure they are compliant with the new law.

What you need to know

Additional leave

The Act introduces the concept of “domestic violence leave” under the Holidays Act. An employee who is affected by domestic violence may take up to 10 days domestic violence leave in each 12 month period, in addition to their annual leave entitlement. The leave cannot carry forward and does not accrue. If an employee is already on annual leave, bereavement or sick leave, they can convert that leave into domestic violence leave if eligible.

Who is entitled to domestic violence leave?

The leave is available to a person who is inflicted or has been inflicted by domestic violence, or a person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted domestic violence.

Before being entitled to the leave, the employee must have completed six months continuous employment, or over a period of six months worked for at least an average of 10 hours a week and no less than one hour in every week during that period or at least 40 hours in each month. When applying for leave, the employee does not have to produce evidence that they are or have been inflicted by domestic violence, unless the employer expressly requests that information.

Flexible working

A person who is inflicted or has been inflicted by domestic violence can request a short term (two months or less) flexible working arrangement including a change in their location of workplace, and their duties at work.

There is no time limit on the request. The request for flexible working can be made regardless of how long ago the violence occurred, and even if it occurred before they became an employee. An employer has an obligation to deal with the request no later than 10 working days after receiving it. The employer must also provide the employee with information about appropriate specialist domestic violence support services. An employer can request proof of domestic violence but there are strict time limits for requesting such information.

Can an employer refuse a flexible working request?

In certain circumstances an employer can refuse the request, although this is in limited circumstances. Broadly, where employee does not provide the proof requested or where an employer can determine that the request cannot be accommodated then the request can be declined. The lack of accommodation must be because of one or more of the following: an inability to reorganise work among existing staff; an inability to recruit additional staff; detrimental impact on quality or performance; there is insufficient work during the periods the employee proposes to work; planned structural changes; burden of additional costs; or due to the detrimental effect on the employer's ability to meet customer demand. In short, the same test as the current flexible working rules.

Personal Grievances

An employee will be able to raise a grievance with their employer or a file claim under the Human Rights Act if they believe they have been treated adversely on the grounds that they are suspected or assumed to be a person affected by domestic violence. An employee can also refer the matter to the Labour Inspector; to mediation or to the Employment Relations Authority if they believe their employer has not complied with the Act.

Where to from here?

If you are an employer, we suggest you review, amend and update your policies to ensure all employees

understand their entitlements.

We are already very familiar with Domestic Violence policies and are happy to assist you in tailoring one for your organisation.

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