

Fair Work Legislation Amendment Bill 2022

(Secure Jobs, Better Pay)

Pay Secrecy Clauses – 7 December 2022

The Fair Work Legislation Amendment Act 2022 gives employees a ‘workplace right’ to ask other employees about their pay or disclose their salary to other employees.

Actions for Employers:

1. Review your employment contracts to ensure your contracts do not contain pay secrecy clauses
2. Job advertisements can’t include pay rates that would breach the Fair Work Act or industrial instrument

Flexible Work and Unpaid parental Leave requests – 6 June 2023

Under The Fair Work Act, employees can request a flexible working arrangement when they have had 12 months of service and they:

- Are the parent or have responsibility for the care of a child who is school aged or younger
- Are a carer
- Have a disability
- Are 55 or older
- Experiencing family or domestic violence or
- Provide care or support to a member of their household or immediate family who required care and support because of family or domestic violence

Actions for Employers:

The criteria still apply but the amendment is when an employer receives a request for flexible working arrangements you will need to:

- Meet with the employee and genuinely try to reach an agreement
- Employers need to consider – the needs of the employee, consequences for the employee if the changes were not made and any reasonable business grounds for refusing the request.
- Employers must respond to the employee in writing within 21 days, outlining if the request is approved or refused.
- Refer to your relevant award as this will contain specific information on what needs to be included in the written response if the request is refused.

Unpaid parental leave requests

The new legislation changes how the employer must respond to a request for extending unpaid parental leave.

Actions for Employers

If you refuse the request to extend you must

- Respond in writing within 21 days
- Only refuse if – the request has been discussed and genuinely tried to reach an agreement with the employee, they have considered the consequences of refusing and the refusal is on business grounds.
- There are specific requirements if the employer is refusing on business grounds e.g. reasons for refusal, particular business grounds and application of these to the request, state if there is an alternative period which the employer would agree to and
- Include a dispute resolution process.

Fixed Term Contracts (6 December 2023 or earlier)

The new legislation makes it unlawful for an employer to enter into a fixed term contract where:

- The term is greater than 2 years or
- The original term of the contract plus any renewal period is greater than 2 years or
- There is an option or right to renew the contract more than once

Anti-Discrimination Protections

The new Fair Work Legislation includes more protected attributes at work such as breastfeeding, gender identity and intersex status. Employers are prohibited from taking adverse action against current or future employees because of these additional attributes.

Enterprise Agreements

Zombie Agreements – Pre- Fair Work Act Enterprise Agreement will automatically terminate on 7 December 2023, you can apply for an extension, but only if the EA is beneficial to employees.

For more information on the changes to the enterprise bargaining rules, you should consult your Industrial relations advisor.

Sexual Harassment

This amendment takes into consideration some of the recommendations from the Respect@Work Report. One of these recommendations is to introduce a broad prohibition against sexual harassment in connection with work.

Employers will now be held liable for sexual harassment in the workplace unless they can demonstrate policies and reasonable steps to eliminate workplace sexual harassment, sex discrimination and victimisation – positive duty.

Action for employers

Depending on the size of your organisation you should have a plan on how your business wishes to address the positive duty. Reach out to your industrial relations advisor for more information.

Note, this notice is for informational purposes only and is not intended to be legal advice. We strongly encourage members to seek the advice of a qualified legal professional if they have any questions or concerns about the impact of the legislation change on their individual circumstances.