

I have heard that there are changes to parental leave from 1 January 2010 in that an employee can seek additional leave after 12 months. Can you explain?

Extension of parental leave

Under the National Employment Standards (“NES”) an employee with at least 12 months of continuous service will be entitled to 12 months unpaid parental leave if the leave is associated with:

- the birth of a child of the employee or the employee’s spouse or defacto partner;
- the placement of a child with the employee for adoption; or
- the employee’s responsibility for the care of the child.

An employee, or an employee’s spouse or defacto partner, may also request to extend the period of parental leave up to a further 12 months. Importantly, however, an employer may only refuse such a request on reasonable business grounds.

Right to Request Flexible Working Arrangements

The NES also provides an employee with the right to request flexible working arrangements. Under the NES an eligible employee who is a parent, or has the responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child is:

- under school age; or
- under 18 years and has a disability

What is a change in working arrangements?

The *Fair Work Act 2009* (Cth) (“Act”) does not limit what types of flexible working arrangements may be requested. However some examples are:

- changes in hours of work;
- changes in patterns of work; and
- changes in location of work.

What are the requirements for requesting leave?

The employee must make a request in writing and must set out details of the change sought and the reasons for the change.

What about for the employer?

The employer must respond to such a request in writing within 21 days, stating whether the employer grants or refuses the request. If the employer refuses the request, the written response must also detail reasons for the refusal.

The employer can only refuse the request based on 'reasonable business grounds.'

What are 'reasonable business grounds'?

Again, the Act does not limit the grounds on which an employer can refuse a request but examples include the effect on the workplace and the employer's business of approving the request, including the financial impact of doing so and the impact on efficiency, productivity and customer service. Some factors to consider would be:

- the inability to organise work among existing staff;
- the inability to recruit a replacement employee; and
- the practicality or otherwise of the arrangements that may need to be put in place to accommodate the employee's request.

What action can an employee take if a request is refused?

There is no provision within the Act for Fair Work Australia (FWA) to make an order unless the parties have agreed in an employment contract or an enterprise agreement that either party can make an application for FWA to deal with the dispute.

An employee may alternatively make an application to FWA based on 'adverse action' (the broad term describing adverse treatment towards an employee that is unlawful due to a discriminatory reason e.g. altering the position of the employee to the employee's detriment).

Outside of the Act, an employee may also have a claim under either State or Federal discrimination legislation.

To help facilitate the application process for flexible working conditions, please refer to our template and information pack called "Flexible Working Conditions".

We can assist you to make sure you do not breach your legal obligations. To find out more about the services that we offer please contact one of our workplace lawyers or workplace consultants on (02) 8030 8888.

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