

Legal Advances in Paid Family and Domestic Violence Leave

The Impact of Family and Domestic Violence

Family and domestic violence (FDV) is a significant problem in our community. Research suggests that FDV disproportionately affects women, with 1 in 4 women (23%) over the age of 15 being affected by FDV compared to 1 in 13 men (7.8%).

In May 2022, a Full Bench of the Fair Work Commission (FWC) outlined its provisional view that modern awards should be amended to include an entitlement to ten days' of paid leave each year in situations involving FDV.

This provisional view was expressed in response to an request by the Australian Council of Trades Union (ACTU) for a review of the current leave entitlements in place for individuals who have experienced FDV.

The ACTU had made a similar request in 2014 but, while conducting its regular review of modern awards in 2017, the FWC had rejected that request and, instead, proposed that access to unpaid leave be granted for persons affected by FDV.

So, what has changed since 2017?

The FWC noted a reported increase in the frequency and severity of FDV during the pandemic, and its tangible impact on employees, their family, the general community, and employers. The FWC considered that paid FDV would assist those affected to maintain their financial security, enhance their ability to access relevant services, and provide a safe pathway away from FDV.

In the FWC's view, FDV is a "workplace issue that requires a workplace response", and paid leave provides a "critical mechanism" to enable employees affected by FDV to retain their employment and financial security. Accordingly, it considered that it was appropriate to amend modern awards to include paid FDV leave.

The FWC noted that it was up to the Federal Government to consider amending the National Employment Standards to include paid FDV in order to ensure that those employees not covered by a modern award would also have access to the paid leave.

What happens next, and the Federal Government's Response

The FWC invited relevant stakeholders, such as the ACTU and industry groups (who oppose the inclusion of paid FDV leave) to draft a model clause to be included in modern awards. Thereafter, various stakeholders, including the Federal Government, will have the opportunity to express their views about the model clause. Once that has occurred, hopefully we will see the entitlement being included in modern awards.

Furthermore, on 28 July 2022, the Federal Government introduced the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (the Bill). The Bill proposes to amend the National Employment Standards contained in the Fair Work Act 2009 by allowing a non-accumulating entitlement to 10 days paid family and domestic violence leave each year. If the Bill passes, this entitlement will be available to (almost) all employees in Australia, and not just those who are covered by modern awards.

It is predicted that the Bill will be passed and the provision become law later this year.

What is considered ‘Family and Domestic Violence’?

The Bill expands the definition of FDV which is currently contained in the Fair Work Act 2009 (Cth). Currently, only violent, threatening or other abusive behaviour by a close relative of an employee is considered to be “FDV”. However, the Bill proposes to expand this definition to include such behaviour by:

- a member of an employee’s household;
- a current intimate partner of an employee; or
- a former intimate partner of an employee.

In what circumstances would FDV leave be available?

The Bill proposes that employees will be entitled to access paid FDV leave if they:

- experience family and domestic violence; and
- need to do something to deal with the impact of that violence; and
- it is impractical to deal with that violence outside their ordinary work hours.

For example, FDV leave could be taken for the purposes of:

- making arrangements for the employee’s safety or the safety of a close relative, such as a dependent child;
- attending urgent Court hearings; and
- accessing police and other emergency services.

The Bill proposes that all employees will be entitled to paid family and domestic violence leave. This includes casual and part-time employees.
We will keep you updated as to the progress of the Bill and FDV leave amendments to modern awards.

How Can Andersons Help?

If you require assistance in relation to your employment rights, Andersons Solicitors has an experienced **employment law team** that are ready to assist with your enquiry. You can also reach out directly to this article's author **Special Counsel Margaret Kaukas.**

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.