'Secure Jobs, Better Pay Act' 2022 – Requests for flexible working & extension of unpaid parental leave

From early June 2023, amendments to the Fair Work Act (Cth) 2009 – "the Act" – which were included in the "Secure Jobs, Better Pay Act" came into effect. Two of the changes to the Act which may be of particular relevance or interest to our clients are as follows:

1. Flexible Working Arrangements

The Act already contained provisions enabling workers to request flexible working arrangements under certain circumstances. However, now the right to request flexible working arrangements has been extended to include employees who:

- have a member of their immediate family or household who is experiencing domestic violence; and
- are pregnant

The Act requires the employer to do certain things when receiving a request for flexible working

arrangements. Previously, an employer was only required to respond in writing to such a request within 21 days, and could refuse the request if they had reasonable grounds to do so. Since the amendments, the employer is now required to also:

- discuss the request with the employee;
- significantly, make a genuine effort to seek out alternative arrangements that will accommodate their employee's circumstances; and
- consider the consequences that could result from a refusal of the request.

It is important to appreciate that the right is a right to REQUEST flexible working arrangements, and not a right to be GRANTED flexible working arrangements. Prior to the amendments, a worker's ability to challenge a decision by the employer in relation to such a request was limited. Now, significantly, a worker can ask the Fair Work Commission to review, and make Orders about, disputes concerning a request for flexible working hours. That is, the amendments provide more opportunity for a worker to challenge a decision by their employer not to grant flexible working arrangements.

2. Extension of Unpaid Parental Leave

Similar to the situation with flexible working arrangements, a worker has a right to REQUEST an extension of unpaid parental leave, but not a right to be GRANTED such an extension. Previously, the only obligations upon an employer if a worker made a request to extend a period of unpaid parental leave were to: respond to such a request in writing within 21 days; and discuss their reasons with the worker if they refused the request, and a worker had no right to challenge or dispute any refusal.

Now, due to the amendments, an employer can only refuse a request to extend unpaid parental leave if it:

- has made a genuine attempt to discuss the request with the worker;
- has considered the consequences of the refusal; and
- has reasonable business grounds to refuse,

and the employer is now required to provide in the written response, the reasons for the refusal, and any alternative period of extension the employer is willing to agree to.

Significantly, the FWC now has the power to deal with disputes about requests to extend unpaid parental leave.

These changes may appear to be relatively modest. However, at Andersons we consider that, in particular, the ability of the Fair Work Commission to adjudicate on disputes about requests for flexible working arrangements or extensions of unpaid parental leave is an important development.

It is to be hoped that this will encourage employers to genuinely attempt to accommodate the individual and changing circumstances of its workforce, and thereby enable its workers to continue to participate in work as their circumstances change. In our view, this will be a "win" for both workers and for employers who will be better able to retain trained and skilled staff.

How Can Andersons Help?

If you have any questions about the changes to the Fair Work Act, relating to the Secure Jobs, Better Pay Act or any other Employment Law matter please contact **Margaret Kaukas, Special Counsel** in Employment and Industrial Law team.

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