

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

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Topics

We will provide a general overview and suggested action for employers in relation to some of these changes, including:

- Changes to flexible work requests and requests for extended unpaid parental leave;
- The prohibition on pay secrecy clauses;
- Limitation on the use of fixed term employment contracts; and
- The prohibition of sexual harassment in connection with work.



Flexible Work Requests

Who can request flexible work arrangements?

- Employees who have worked with the same employer for at least 12 months can request flexible working arrangements if they:
 - are the parent, or have responsibility for the care, of a child who is school aged or younger
 - are a carer (under the Carer Recognition Act 2010)
 - have a disability
 - are 55 or older
 - **are experiencing family or domestic violence,**
 - **provide care or support to a member of their household or immediate family who requires care and support because of family or domestic violence; or**
 - **are pregnant.**



Flexible Work Requests

- There are new obligations on employers before they can refuse a request.
- Employers will be required to:
 - discuss the request with the employee
 - make a genuine effort to find alternative arrangements to accommodate the employee's circumstances
 - consider the consequences of refusal for the employee
 - provide a written response within 21 days that includes:
 - an explanation of the reasonable business grounds for refusing the request and how these grounds apply to the request
 - other changes the employer is willing to make that would accommodate the employee's circumstances or that says there aren't any changes
 - information about referring a dispute to the Fair Work Commission.

Flexible Work Requests

- The Fair Work Commission now has power to conciliate and arbitrate disputes in relation to flexible work arrangement applications.
- An application may be made by an employee if an employer:
 - refuses an employee's request, or
 - doesn't respond to a request within 21 days.

Case Study

Natasha Fyfe v Ambulance Victoria
(Fair Work Commission – 6 January 2023)

- Shift 6pm – 8am
- Proposal 9pm – 6am
- AV Refused
- Operational demand
- Reasonable business grounds
- Weigh personal circumstances against costs and impact on business
- Employer can't just say it costs more
- There will be inevitable small adverse impacts
- Business – not just one branch – whole organisation
- Build review mechanism
- Partners work arrangements
- Child minding options (3 and 5 years old)
- Flood gate effect – is a factor [AV 6000 staff 200th request]

Pay Secrecy Clauses

- The Act prohibits and invalidates the use of pay secrecy clauses in employment agreements entered into from 7 December 2022.
- This change provides employees or future employees with a new workplace right to share (or not share) information about their pay or other terms and conditions of their employment.



Prohibition on Pay Secrecy Clauses

Suggested Employer Action:

- All employment contract templates should be reviewed and any pay secrecy or confidentiality clauses should be removed immediately.
- Managers should strategize and proactively address any issues that could arise from pay transparency amongst the workforce.
- In salary discussions, managers should prepare to answer employee questions about wage comparisons and ensure that communication with all employees about remuneration for certain roles is consistent.
- Employers could conduct an audit of their existing workforce to identify any potential pay disparities and address it before it becomes an issue amongst staff.



Fixed Term Employment Contracts

- The Act seeks to limit the use of fixed-term contracts.
- From 6 December 2023, employers can not employ an employee for a fixed term that:
 - is for 2 or more years (including extensions); or
 - may be extended more than once.



Fixed Term Employment Contracts

- The exceptions include:
 - Where the employee is engaged to perform a distinct and identifiable task involving specialised skill;
 - The employee is engaged under a training arrangement (that is, an apprentice or a trainee);
 - The employee is engaged to undertake work during emergency circumstances or during a temporary absence of another employee;
 - In the year the contract is entered into, the employee's earnings are above the high income threshold for that year (the high income threshold is currently \$162,000);
 - The contract relates to a position for the performance of work that is funded in whole or part by government funding, the funding is payable for a period of more than 2 years and there are no reasonable prospects that the funding will be renewed after the end of the period;
 - The contract relates to a governance position that has a time limit under the governing rules of a corporation or association; or
 - A modern award permits it.

Fixed Term Employment Contracts

Suggested Employer Action:

- Review and update existing fixed term employment contract templates - remove references to multiple renewals.
- Plan for the composition of the workplace with the upcoming limitation on the use of fixed term employment contracts in mind.
- Educate managers on when fixed term contracts may or may not be used and update any internal protocols for offers of fixed term employment contracts.
- Identify any exceptions that may apply to the business that will allow fixed term contract to be used.
- Include a written acknowledgement that the exception applies in the contract (where applicable).



Extended unpaid parental leave requests

- There is a new regime for responding to requests for an extension of unpaid parental leave (for a further 12 month period resulting in a total leave period of 24 months).
- The Act requires that the employer respond to the request within 21 days, that there is consultation with the employee about the request and a genuine attempt to reach agreement.
- The Commission has powers to deal with any dispute.

Prohibition of Sexual Harassment

- The Act introduces a prohibition of sexual harassment in connection with work, with persons or companies being vicariously liable for the acts of their employees and/or agents unless they can prove that they took all reasonable steps to prevent the harassment.
- The protection against sexual harassment in the workplace will apply to employees, contractors, volunteers, work experience students, future workers and anyone conducting a business.
- There are broader powers for the Fair Work Commission to deal with sexual harassment disputes.



Prohibition of Sexual Harassment

Suggested Employer Action:

- Review and update workplace policies to ensure that they clearly state that sexual harassment or discrimination of any kind is prohibited and will result in disciplinary action being taken against the perpetrator.
- Ensure policies extend to all workers.
- Review procedures for responding to a complaint and review investigative processes.
- Educate workers on sexual harassment policies and procedures.
- Support a culture that encourages employees to speak up.



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