



A NEW LEAVE ENTITLEMENT UNDER THE FAIR WORK ACT

With effect from 12 December 2018, all employees covered by the *Fair Work Act 2009* (Cth) (**Act**) will be eligible to take up to five days of unpaid family and domestic violence leave in a 12-month period.

Family and domestic violence leave entitlements have featured in modern awards since July 2018. Now, all employees covered by the Act will be able to access the entitlement if they experience family and domestic violence and need time off work to deal with the impact of that violence.

Whilst family and domestic violence leave is unpaid, it is available for immediate use by any casual, part-time or full-time employee; it does not accrue over time nor does it roll-over from year to year. It is a “use it or lose it” entitlement.

The new leave entitlement can be taken in full and at once (five days in a row) - or - in separate periods of one or more days. By agreement, the entitlement may be taken in single periods of less than a full day (such as by the hour).

It is beyond unfortunate that there is a need for this new leave entitlement. However, it is important that employers know and understand that the law has changed as well understanding what the change actually means for them and their staff.

Under the newly amended National Employment Standards, section 106B(2) of the Act defines family and domestic violence to be:

“violent, threatening or other abusive behaviour by a close relative of an employee that: (a) seeks to coerce or control the employee; and (b) causes the employee harm or to be fearful”.

Relevantly, family and domestic violence need not be physical in nature.

Employees are eligible to take this leave if:

- they, or a close relative of theirs, is experiencing family and domestic violence; and
- they need to do something to deal with the impact of the family and domestic violence (i.e. attending court or the police); and



- it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

Tips for employers

It is important employers are aware of this new leave entitlement. Set out, below, are a few quick tips.

- Employees who need to access this type of leave may not know it exists. Communicating with staff about family and domestic violence leave may present its challenges but is important; it is timely that employers review and update their leave policies and forms to reflect the recent legislative changes.
- Remember, employees who experience family and domestic violence may not always display physical symptoms.
- Whilst employers should adopt a best practice approach, the purpose of this leave is to afford employees the time to attend to matters they are unable to get to before or after work.

If you would like any assistance with any area of Employment Law and Workplace Relations, please do not hesitate to get in touch with Murfett Legal on +61 8 9388 3100.

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