

The Senate's Education and Employment Legislation Committee reported on 1 September 2022 (Report) in favour of the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Bill). As such, the Bill looks likely to pass, and employers should start reviewing their processes now to prepare for the new entitlements.

The Entitlement

As we set out in our earlier [article](#), the Bill will introduce 10 days of paid leave for employees experiencing family and domestic violence (FDV) and who need to do something to deal with the impact of FDV during their working hours (Paid FDV Leave).

If the Bill is passed, Paid FDV Leave will start to accrue for existing employees from 1 February 2023 (or 1 August 2023 for small business employers). The entitlement will then reset on each anniversary of the employee's commencement date. As such, employers will need to be ready for requests for Paid FDV Leave immediately on 1 February 2023 (or 1 August 2023).

Payroll

Employees availing themselves of Paid FDV Leave will be entitled to receive their full rate of pay for the hours they would have worked had they not taken the leave; this includes casuals who will be entitled to payment for the hours they were rostered to work.

Employers will need to have in place payroll processes to ensure the correct amounts are paid for this leave. It will be important for payroll to appreciate that the pay entitlement for Paid FDV Leave is different to the entitlement for annual or personal/carer's leave (which is at an employee's base rate of pay) and is a new concept for casual employees.

Policies and Training

Managers and human resources employees will need to be aware of the many situations and circumstances that may give rise to the Paid FDV Leave entitlement. For example, many of the appointments that a person leaving an FDV situation may require, such as meeting with a lawyer or financial advisor, will normally only be available during business hours. Managers will also need to be aware of, and deal with, the fact that potential threats from the FDV perpetrator may complicate a request for leave by forcing the employee to request the leave, or request a change to the leave, at the last minute.

Employers can require the employee to provide evidence that would satisfy a reasonable person that the leave was taken to deal with FDV. In order to deal with requests and potential evidential requirements, and assist their managers, employers should put in place comprehensive policies for the manager to rely on. A comprehensive policy will help guide the manager in when to request evidence and what type of evidence (if any) is reasonable to request. At the same time, the policy should make it clear that flexibility will be required to deal with each situation; for example, leave may be sought as a matter of urgency and the employee may need to be given the opportunity to provide the evidence after the leave is taken.

Accompanying the policy, employers should introduce training to deal with Paid FDV Leave requests. This training should provide managers with the tools to have supportive conversations with employees experiencing FDV, and allow them to treat the employee with respect and compassion, even in delicate situations where evidence may need to be sought.

Managers will need to know how to deal with a range of situations, such as:

- If the employee asks that no one else be informed, will managers know what to say and how to process the leave?
- If the employee has been performing poorly, how will a disclosure of FDV impact ongoing appraisals or management?
- What ongoing support should be offered, or conversations had, after a Paid FDV Leave request is made?

Training should also be available for employees other than management and human resources. It may be that an employee experiencing FDV makes a disclosure to a co-worker. This may not come about by way of requesting the Paid FDV Leave, but the Bill reflects evidence that the workplace can play a significant role in driving cultural change, in part by normalising conversations about FDV and allowing employees to feel safe to make such disclosures.

Records

As referred to in the Report, addressing confidentiality and privacy is critical in implementing Paid FDV Leave. Employers will need to consider these issues in deciding how they will record this leave and how it will display on a payslip. Use of a generic leave label should be considered, so that the Paid FDV Leave is not disclosed to any other employee or, possibly, the perpetrator of the FDV.

One way to protect privacy and confidentiality is to introduce procedures that will keep documentation to a minimum. In many instances where evidence has been sought, it may be appropriate and preferable for the relevant manager to simply have sight of the evidence rather than keep a record on the employee's (or any other) file.

Duty of Care

If a Paid FDV Leave request is made by an employee who works from home, an employer may be on notice that their employee is in a violent or threatening environment while at work. With the increase of working from home and hybrid working situations, employers will need to be mindful of their duty of care to these workers.

Employers should introduce both policies and training that will allow managers to know how to raise the issue of ongoing safety with an employee, while respecting their privacy. If possible, it may be appropriate to offer that the employee attend the office rather than continuing to work from home. Managers should also be equipped with the contact details of appropriate services that they can refer the employee to.

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