



**Community
Legal Centres
Queensland**

**Fair Work Act Amendments:
Paid Family and Domestic Violence Leave;
Secure Jobs, Better Pay Act &
Respect at Work Act**

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27 April 2023

Acknowledgement of country

Community Legal Centres Queensland acknowledges the traditional owners of the land on which we are holding this presentation, the Turrbul and Jaggara people.

We pay our respects to their elders, past, present and emerging, and acknowledge the important role Aboriginal and Torres Strait Islanders continue to play in our society.

As this presentation is being viewed throughout Queensland, we also pay respect to the traditional owners of the land throughout the country and extend a warm welcome to any First Australians listening to this presentation.



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Presenters



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- Recognised in The Best Lawyers in Australia 2022 — Labour and Employment Law; Employee Benefits Law; Occupational Health and Safety Law
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Agenda

Background to legislative changes

Paid Family and Domestic Violence Leave Act

Respect at Work reforms

Secure Jobs, Better Pay Act



Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

Entitlement

- The National Employment Standards (**NES**) will include:
 - Up to 10 days of paid family and domestic violence leave – replacing the previous entitlement to unpaid leave.
 - Entitlement will apply to all employees: full-time, part-time and casuals.
 - Leave can be accessed by an employee:
 - who is experiencing family and domestic violence
 - where the employee needs to do something to deal with the impacts of the violence and it is impractical for the employee to do that thing outside their ‘work hours’
- 1 February 2023 for large employers (15+ employees).
- 1 August 2023 for small business employers (< 15 employees).



Paid Family and Domestic Violence Leave

Key features

- Noncumulative annual entitlement.
- Wide range of uses – anything to deal with the impacts of FDV not practical to do outside working hours.
- FDV occurs when a person’s ‘close relative’, current or former intimate partner or member of their household both:
 - Seeks to coerce or control them and cause them harm or fear
 - Is violent, threatening or behaves in another abusive way
- Paid at ‘full rate of pay’.
- Special payslip rules.
- Notice, evidence and confidentiality requirements.

Respect at Work reforms

Background

- Gives effect to the legislative amendments recommended in the Australian Human Rights Commission's (**AHRC**) Respect@Work Report.
- The Respect@Work Report provided recommendations to address sexual harassment in Australian workplaces.
- Reforms occurred via:
 - *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*; and
 - *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022*

Respect at Work reforms

Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021

- Commenced operation on 11 September 2021.
- Implements **six** recommendations from the Respect@Work Report.
- Major amendments:
 - Fair Work Commission (**FWC**) can now make “stop sexual harassment” orders;
 - Time limit to file a sexual harassment complaint in the AHRC now two years;
 - New provision in the *Sex Discrimination Act 1984* (Cth) – unlawful to harass a person by reason of the sex of the person; and
 - Miscarriage included as a permissible occasion in relation to the entitlement to paid compassionate leave under the *Fair Work Act 2009* (Cth).

Respect at Work reforms

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022

- Mostly commenced operation on 13 December 2022.
- Implements **seven** recommendations from the Respect@Work Report.
- Major amendments to the *Sex Discrimination Act 1984* (Cth) and the *Australian Human Rights Commission Act 1986* (Cth).

Respect at Work reforms

Positive duty on employers

- Employers are required to “take reasonable and proportionate measures” to eliminate, as far as possible:
 - workplace sexual harassment, sex discrimination and sex-based harassment;
 - conduct that amounts to subjecting a person to a hostile workplace environment on the ground of sex; and
 - certain acts of victimisation.
- Positive duty operates concurrently with existing duties under Work, Health and Safety legislation at a Federal, State and Territory level.

Respect at Work reforms

Enforcement of positive duty

- Extended powers provided to the AHRC to monitor and assess compliance of employers with the new positive duty.
- Extended powers provided to the AHRC commence on **12 December 2023**.

Duty to prevent hostile work environment

- *Sex Discrimination Act 2009* (Cth) now prohibits conduct which subjects a person to a workplace environment that is hostile on the ground of sex.
- Applies to conduct perpetrated by third parties (i.e., customers / clients).

Respect at Work reforms

Other amendments

- New object of the *Sex Discrimination Act 2009 (Cth)* – “achieve substantive equality between men and women”.
- Victimising conduct can form the basis of **both** a civil action for unlawful discrimination in addition to a criminal complaint under the:
 - *Anti-Discrimination Act 1991 (Cth)*;
 - *Disability Discrimination Act 1992 (Cth)*; and
 - *Racial Discrimination Act 1975 (Cth)*.
- Representative bodies (i.e., unions) can now initiate proceedings in the Federal Courts on behalf of people who have experienced unlawful discrimination.

Secure Jobs, Better Pay

Prohibition on workplace sexual harassment

- Prohibition under the *Fair Work Act 2009* (Cth) on sexual harassment in connection with work.
- Includes any unwelcome conduct of a sexual nature that is likely to offend, humiliate or intimidate a person (e.g., a request for sexual favours) as well as conduct committed by third parties (e.g., by a client against a worker).
- Commenced 6 March 2023.
- Maximum penalty for a breach of this provision:
 - \$82,500 for a body corporate; and
 - \$16,500 for an individual.

Secure Jobs, Better Pay

Vicarious liability of employers

- Employers can now be held vicariously liable under the *Fair Work Act 2009* (Cth) for sexual harassment committed by their employees or agents in connection with their employment.
- Only applies to sexual harassment that occurs on or after 6 March 2023.
- Employer will not be vicariously liable if it can prove that it took all reasonable steps to prevent the sexual harassment.

Secure Jobs, Better Pay

Expanded powers of the FWC

- Commenced 6 March 2023.
- FWC can now directly deal with a dispute about sexual harassment in addition to, or as an alternative to, making an application for a “stop sexual harassment order” via:
 - mediation;
 - conciliation,
 - making a recommendation; or
 - expressing an opinion.
- If the dispute is not settled in the FWC:
 - with the consent of both parties, the FWC can arbitrate the dispute; or
 - if no consent is given, an applicant can make an application to the Federal Courts.

Secure Jobs, Better Pay

Anti-discrimination provisions

- From 6 December 2022, three new “protected” attributes added to the existing anti-discrimination provisions of the *Fair Work Act 2009* (Cth):
 - Breastfeeding;
 - Gender identity; and
 - Intersex status.
- From 6 March 2023, three new Expert Panels in the FWC:
 - the Expert Panel for pay equity;
 - the Expert Panel for the Care and Community Sector; and
 - the Expert Panel for pay equity in the Care and Community Sector.
- From 6 March 2023, the FWC can, on its own initiative, make a determination to vary modern award minimum wages.

Secure Jobs, Better Pay

Limitations on the use of fixed term contracts

- From 7 December 2023, the *Fair Work Act 2009* (Cth) will limit the use of fixed term contracts for the same role to the shorter of:
 - two years (including renewals); or
 - two consecutive contracts.
- Exceptions to this limitation include where the:
 - employee has specialised skills that the employer does not have;
 - employee is engaged as an apprentice or trainee;
 - employer needs additional workers to do essential work during a peak period;
 - employer needs additional staff members during an emergency, or needs to replace a permanent employee who is absent for personal or other reasons;
 - employee earns over the high-income threshold (currently \$162,000); and
 - employer is reliant on government funding.



Secure Jobs, Better Pay

Limitations on the use of fixed term contracts

- From 7 December 2023, employers will be required to provide a “Fixed Term Contract Information Statement” to all fixed term employees.
- Where a fixed term contract is made in breach of the new provisions, the employee will be considered a permanent employee – i.e., all terms of the contract, save the fixed term “expiry” date, would continue to apply.
- The limitations do **not** retrospectively apply to fixed contracts entered into before 7 December 2023 – only those entered into after this date.
- Any existing fixed term contracts, however, will be counted towards the relevant limits (i.e., a maximum fixed term contract length of 2 years) in relation to any contract renewals from 7 December 2023.

Secure Jobs, Better Pay

Prohibition on pay secrecy clauses

- Employees now have the right to discuss any aspect of their **personal** remuneration, including terms and conditions of employment (e.g., number of hours worked, commission amounts etc.) with any person.
- This does not, however, authorise an employee to discuss salary information disclosed to them by other employees.
- New workplace right in the *Fair Work Act 2009* (Cth) to protect employees against adverse action in relation to this new pay secrecy prohibition.

Secure Jobs, Better Pay

Prohibition on pay secrecy clauses

- For contracts entered into **before** 7 December 2022:
 - any pay secrecy clauses will continue to operate and be enforceable until the contract is varied or replaced, at which time any pay secrecy provisions will have no effect and be unenforceable.
 - a “variation” could be, for example, a change in remuneration or work hours.
- For contracts entered into **between** 7 December 2022 and 7 June 2023:
 - pay secrecy clauses will have no effect and cannot be enforced.
- For contracts entered into **on or after** 7 June 2023:
 - an employer who offers an employee a new contract on or after this date that contains a pay secrecy clause inconsistent with the new legislative provisions will be in breach of section 333D of the *Fair Work Act 2009* (Cth).
 - liable to civil penalties of up to \$82,500 per contravention for non-compliance.

Secure Jobs, Better Pay

Flexible work arrangements

- New rules imported into NES from 6 June 2023.
- Examples include changes to hours, patterns or location of work.
- Eligibility rules – 12 months’ service (modified for casuals) and:
 - Pregnant;
 - Caring responsibilities;
 - Disabled;
 - 55+; or
 - Impacted by family and domestic violence.
- Rules for requests.
- Employer must respond in writing within 21 days.
- Requests can be declined, after consultation, upon “reasonable business grounds”.
- New dispute resolution processes extending to arbitrated outcomes.

Secure Jobs, Better Pay

Enhanced small claims procedures

- Under the *Fair Work Act 2009* (Cth) and applicable to proceedings in a magistrates court or the Federal Circuit and Family Court of Australia.
- Effective 1 July 2023.
- Increase to maximum claim threshold from \$20,000 to \$100,000, plus interest and court filing fee.
- Will it make any difference?

Secure Jobs, Better Pay

Enterprise bargaining reforms

- Reforms are significant.
- Object is to secure 'Better Pay' outcomes.
- Reforms seek to:
 - encourage and facilitate enterprise bargaining, particularly multi-business enterprise bargaining; and
 - simplify bargaining and approval processes.
- Zombie agreements to be killed off:
 - By default, from 7 December 2023 (unless extended).
 - Employees to be notified by 6 June 2023 (civil penalty provisions).

What's next?

- Stronger penalties for 'wage theft', including jail sentences.
- Regulation of work in the 'gig economy'.
- Strengthening the general protections jurisdiction.
- Further regulation of work in the road transport industry.
- Additional protections for workers impacted by family and domestic violence.
- Further regulation of labour hire arrangements.

Thank you



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Thank you.

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