



Express law fast track information for clients

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New anti-bullying measures and other amendments to the Fair Work Act 2009

The *Fair Work Amendment Bill 2013* passed the Senate on 27 June 2013 and is awaiting Royal Assent. The Bill gives workers who are being bullied at work the right to apply to the Fair Work Commission to stop the bullying. It also introduces new family-friendly arrangements and makes changes to right of entry provisions, among other things. Most of the amendments discussed below will commence on 1 January 2014.

Agencies will need to review their bullying policies in light of these amendments to ensure they deal appropriately with the new provisions. For example, you may need to ensure your bullying policy is adapted to deal with complaints made by a worker who is not an employee or you may want to make changes to ensure your internal processes for resolving such complaints are likely to satisfy the Fair Work Commission (the Commission).

Agencies should also make sure that their leave policies comply with the new flexible working arrangements and 'transfer to safe job' requirements.

Background

The Bill introduces an anti-bullying measure as part of the Government's response to the House of Representatives Standing Committee on Education and Employment Inquiry report *Workplace Bullying 'We just want it to stop'*. Other amendments implement recommendations of the Fair Work Act Review Panel.

Anti-bullying measure

From 1 January 2014, a worker at a constitutionally-covered business (which includes the Commonwealth or a Commonwealth authority) who has been bullied at work will be able to apply to the Commission for an order to stop the bullying. 'Worker' is not confined to an employee and has the same meaning as in the *Work Health and Safety Act 2011*. But it does not include a member of the Defence Force. The Commission will have the power to dismiss an application if it considers the application might involve matters that relate to Australia's defence or national security or covert or international operations of the Australian Federal Police. Nothing in the amendments requires or permits a person to take or refrain from taking action if to do so would, or could reasonably be expected to, prejudice such matters. And the Chief of the Defence Force, the Director-General of Security and the Director-General of ASIS each have certain powers to declare that these provisions (or any of them) do not apply into certain types of work.

A worker is bullied at work if an individual or a group of individuals repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member, and that behaviour creates a risk to health and safety. Reasonable management action carried out in a reasonable manner does not constitute bullying.

The Commission is required to start dealing with the application within 14 days after the application is made. If the Commission is satisfied that:

- the worker has been bullied at work by an individual or a group of individuals, and
- there is a risk that the worker will continue to be bullied at work by the individual or group

it may make any order it considers appropriate to prevent the worker from being bullied at work by the individual or group (other than an order requiring payment of a pecuniary amount).

A worker who makes an application to the Commission is not precluded from taking action under workplace health and safety legislation.

Family-friendly measures

Expanded right to request flexible working arrangements

The Bill introduces a number of family-friendly measures, including changes to special maternity leave and parental leave. Perhaps most importantly, it broadens the circumstances in which an employee can request flexible working arrangements. An employee can request a change in work arrangements where the employee:

- is the parent, or has responsibility for the care, of a child who is of school age or younger
- is a carer (within the meaning of the *Carer Recognition Act 2010*)
- has a disability
- is 55 years or older
- is experiencing violence from a member of the employee's family
- provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because that person is experiencing violence from his or her family.

An employer can still refuse a request for flexible working hours on reasonable business grounds. The Bill includes examples of reasonable business grounds such as costliness, impracticability, significant loss in efficiency or productivity and significant negative impact on customer service.

These changes will commence on a day to be fixed by proclamation – or 6 months after the Bill receives Royal Assent.

Consultation about changes to rosters or working hours

The Bill introduces a requirement that modern awards and enterprise agreements include a term requiring employers to consult employees about a change to their regular roster or ordinary hours of work. This change commences on 1 January 2014.

Transfer to a safe job

The Bill also extends the entitlement for pregnant women to transfer to a safe job by removing the requirement that they must be first entitled to unpaid parental leave.

Right of entry

The Bill amends the right of entry provisions by (among other things):

- providing that if the permit holder and occupier of the premises cannot agree on a location for the permit holder to conduct interviews or hold discussions then the permit holder may do so in any room or area provided by the occupier for the purpose of taking meals or other breaks
- giving the Commission power to deal with a dispute about the frequency with which a permit holder enters the premises for the purposes of holding discussions
- introducing requirements for occupiers of remote premises (defined as premises where transport or accommodation is not reasonably available to a permit holder) to enter into accommodation and transport arrangements with a permit holder in certain circumstances.

These changes commence on 1 January 2014.

Other amendments

Modern award objective

The Bill adds another factor to the modern awards objective requiring the Commission to take into account the need to provide additional remuneration for employees working overtime, unsocial, irregular or unpredictable hours; on weekends or public holidays; or shifts.

Consent arbitration for general protections and unlawful termination

From 1 January 2014, the Commission will have power, where the parties consent, to arbitrate general protections dismissal disputes and unlawful termination disputes as a faster, cheaper and less formal alternative to court proceedings.

Text of the Bill as read a third time is available at:

http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5028

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