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HUMAN RESOURCES

DOMESTIC VIOLENCE – VICTIMS PROTECTION BILL

QUICK GUIDE

This Quick Guide provides summarised information on amendments to the Holidays, Employment Relations and Human Rights Acts which will come into force from 1 April 2019.

INTRODUCTION

This omnibus Bill passed through the final stages of the legislative process in the last week of June (National and Act opposing it (having supported it to go to Select Committee) on the basis of the problems it will cause for small and medium sized employers.

The amendments introduced by the Bill to the Holidays Act, the Employment Relations Act and Human Rights Act will come into effect on **1 April 2019**.

The Bill's purpose is to provide additional employment protection and support to individuals "affected by domestic violence" – enabling such persons to remain in paid employment.

New Provision for Domestic Violence Leave – 10 days each year

The Holidays Act is amended by including a new category of leave separate from annual holidays and sick leave. Up to 10 days paid *Domestic Violence Leave* (DVL) each year will be available to all employees after six months continuous employment (or if, over 6 months, the employee has worked for the employer for an average of 10 and no less than 1 hour a week or no less than 40 hours a month (as with parental leave)).

A person affected by domestic violence is a person or a child living with that person (or both) against whom someone else is inflicting or has inflicted domestic violence.

Employees affected by domestic violence can take leave regardless of when the domestic violence occurred – which could be before the affected person became an employee

Leave does not accrue from year to year.

Employees are not required to provide proof of being affected by domestic violence when making an application, but an employer may request proof before granting leave. If the employee fails to provide proof without a reasonable explanation, the employer is not required to make payment until the employee complies.

Payment for DVL is calculated on the employee's relevant or average daily pay for each leave day taken on what would otherwise be a working day for the employee. Payment is not needed if an employee is on accident compensation and employees cannot be required to take DVL if they are receiving first week or weekly accident compensation for a work-related injury. If both agree, an employer who pays the difference between first week or weekly compensation and ordinary weekly pay may deduct from the employee's domestic violence leave entitlement 1 day for every 5 whole days the payment is made.

Employers must allow an employee taking annual holidays to take domestic violence leave if affected by domestic violence while on holiday (just as an employee who becomes sick while on an annual holiday can substitute sick leave).

The definition of '[domestic violence](#)' is broad and is as defined by the Domestic Violence Act 1995. It includes physical, sexual and psychological abuse, including harassment, threats, intimidation and financial abuse.

Ability to request flexible working arrangements extended

In addition to the existing types of flexible working arrangements which may be made by employees generally under the Employment Relations Act, those affected by domestic violence will be able to request short term variations (up to 2 months). Requests must be dealt with not later than 10 working days after the employer receives them and can be refused only if proof of domestic violence has been asked for and hasn't been produced, or if the request cannot be reasonably accommodated on non-accommodation grounds set out in the Act. Those grounds are the same as those that currently exist with the exception that an employer will not be able to rely on inconsistency with the terms of a collective agreement (where applicable) as a reason for refusal.

It allows additional forms of variation to those currently available – specifically –

- The location of their workplace,
- Their work duties,
- The extent of the contact details to be provided to the employer, and
- Any other term of employment requiring variation that the employee believes to be necessary to deal with the effects of domestic violence.

Employers must respond to short-term requests not later than 10 working days after receiving them and must provide information about domestic violence support services either in the response or sooner. If a request is refused, the employer must notify the employee of the ground(s) for refusal and explain why it applies.

Employers may ask for proof of domestic violence, either from or on behalf of the employee, to be provided as soon as practicable but within 10 working days of the employer receiving the employee's request. Proof can be required only if the employee is advised within 3 working days of receiving the employee's request that it is required.

Requests may be refused because the required proof was not produced within 10 working days of the employer receiving a leave request or on 'non-accommodation' grounds – inability to reorganise work among exiting staff or recruit extra staff, detrimental impact on quality/performance, insufficient work when the employee wants to work, planned structural changes, burden of additional costs, detrimental effect on ability to meet customer demand. Requests must not be refused because the employee is covered by a collective agreement, the request relates to working arrangements covered by the collective and the employee's working arrangement would be inconsistent with the collective if the request were approved.

Employers can be challenged only on the ground of failure to comply with the notification provisions and as provided in relation to references to a Labour Inspector, mediation, the Authority or because of failure to pay any penalty imposed (see below)

Employees who consider their employer has failed to comply with the notification requirements have 6 months in which to refer the matter to a Labour Inspector, mediation, or the Authority. Referrals can be made from the time the employee is notified of a refusal (if notified within 10 working days) or in any other case, 5 working days after the employer receives the employee's request

Employees dissatisfied with a Labour Inspector's decision can seek mediation with the matter to be treated as an employment relationship problem. Referrals must be made within 6 months of learning of the Labour Inspector's decision

Employees dissatisfied with the result of an initial or a later mediation reference can apply to the Authority. Applications must be made within 6 months of learning the result of mediation

The Authority can impose a penalty (maximum, in the case of a company or other corporation, of \$20,000) on an employer who has failed to comply with the notification requirements. The penalty is to be paid to the employee concerned and an action to recover it must be commenced within 6 months of the date when the cause of action for recovery first became known to the employee or should reasonably have become known.

Adverse treatment because of domestic violence

Domestic violence can be the basis for a personal grievance under the Employment Relations Act if an employee is treated adversely because the employee *'is or is suspected or assumed or believed to be a person affected by domestic violence'*.

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The Human Rights Act is similarly amended to prohibit adverse treatment, implied or overt, of a person affected by domestic violence.

Comment

Given the sensitive nature of domestic violence, employers dealing with requests for leave and flexible working arrangements will want to make sure that they have sufficiently robust processes in place to ensure that an individual's privacy, with respect to supplied information and the manner in which requests are handled, is maintained at all times.

No specific changes to employment agreements or employment policies are required as a result of these changes.

The broad definition of domestic violence, the fact that incidents and circumstances of domestic violence which may trigger requests for DVL and variations can pre-date current employment and the additional compliance costs imposed, mean that employers may well feel challenged by these amendments particularly since employers have no control of events which occur outside of the workplace.

Members seeking assistance or further information should contact our Employment Relations Advisors – telephone: 03 366 5096; email: info@cecc.org.nz