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industrial relations : human resources : employment matters : training

CIRCULAR: GEN/ 168/NAT/168/22
DATE: 1 August 2022
SUBJECT: Paid Family and Domestic Violence Leave
ATTENTION: Chief Executive Officer

As you may be aware, on 28 July 2022 the Government tabled the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022* into Parliament. Below, we provide a summary of the key aspects of this Bill.

Paid Family and Domestic Violence Leave

The crux of the Bill is to provide for a 10 day paid family and domestic violence leave entitlement that replaces the current unpaid 5 days leave entitlement in the National Employment Standards.

The Bill follows a significant decision from the Full Bench of the Fair Work Commission handed down on 16 May 2022, where the FWC determined that in order to meet the modern award objective, a 10 days paid family and domestic violence leave entitlement was required.

Below we set out some key information about the Bill.

a) *Which employees will be covered by the paid leave entitlement?*

All employees.

While the FWC determined that the paid leave entitlement needed to apply to permanent employees only (and that it would therefore be unpaid for casual employees), the Bill extends the paid leave entitlement to include casual employees.

While the Bill is not yet law (and may change), the proposal is that a casual employee would be able to access the paid leave entitlement in relation to shifts that they have *accepted* at the time that they access the paid leave.

b) *When can the paid leave be accessed by an employee?*

The entitlement will remain available for an employee who needs to do something to deal with the impact of 'family and domestic violence'.

The current definition of 'family and domestic violence' refers to violent, threatening or other abusive behaviour by a 'close relative' of the employee. Close relative means a member of the employee's '*immediate family*' or a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

Under the Bill, the definition will be extended to apply to behaviour from '*a member of the employee's household, or current or former intimate partner of an employee*'.

c) *When is the leave available to an employee?*

Same as the current 5 days unpaid leave entitlement, the proposed 10 days paid will be available in full, upfront, at the commencement of each year (meaning it is not accrued during a year of employment).

d) *What rate is the leave paid at?*

The paid leave will also be at the 'full rate of pay' – in contrast to the 'base rate of pay', which applies for other paid leave entitlements such as annual leave and personal / carer's leave under the NES. The distinction is that the full rate of pay is inclusive of penalty rates and allowances (per section 18 of the FW Act).

e) *When will the new entitlement commence?*

To provide time for payroll and other adjustments, the Government has proposed a commencement date of **1 February 2023** and has also provided an additional 6 months (ie 1 August 2023) for small business employers (meaning those who employ less than 15 employees).

You can find a copy of the Bill [here](#) and the Explanatory Memorandum [here](#).

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447. The Information provided in this email is generic advice. For advice in respect of your specific situation please contact us.



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