

Chapter 12: Domestic violence and employment

People experiencing domestic violence often need time off work to attend appointments with their solicitor or court. This chapter sets out rights your client may have in the workplace.

Flexible working arrangements

Your client may have the right to request flexible working arrangements under sections 65(1) and 65(1A)(e) of the *Fair Work Act 2009* (Cth) (FWA), if they are experiencing domestic and family violence. Examples of flexible working arrangements include:

- ▶ changes to location of work;
- ▶ changes to work hours;
- ▶ time off work to attend court dates or medical appointments; or
- ▶ arrangements to work from home.

Section 65(1) and 65(1A)(f) of the FWA states that employees who are supporting a member of their household or an immediate family member who is experiencing domestic or family violence may also have a right to request flexible working arrangements.

Who is eligible to apply?

Employees will be eligible to apply for flexible working arrangements if they are a National System Employee, which is defined by sections 59, 13 and 14 of the FWA. Most employees in NSW are National System Employees with the exception of state government employees and employees of local councils.

Section 65(2)(a) requires employees to have completed at least 12 months of continuous service immediately before making the request.

Section 65(2)(b) allows casual employees who are long-term casual employees and have a reasonable expectation of continuing employment with the employer on a regular and systematic basis to apply for flexible working conditions.

Making a request for flexible working arrangements

Section 65 of the FWA sets out the requirements for making a request for flexible working conditions. The request must be in writing and set out details of the changes sought and the reasons for the change (s 65(3)). It is important to note that section 65 is only a right to request flexible working conditions, rather than a right to flexible working conditions.

An employer must provide the employee with a written response to their request within 21 days of the employee making the request (s 65(4)). The employer must tell the employee whether the request has been granted or if it has been refused. The employer may only refuse the request on reasonable business grounds (s 65(5)). Section 65(5A) sets out reasonable business grounds to include the following:

- ▶ the new working arrangements requested by the employee would be too costly for the employer;
- ▶ there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- ▶ it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
- ▶ the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- ▶ the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

If the employer refuses the request, the written response must include details of the reasons for the refusal (s 65(6)).

Practitioner tip

The FWA does not include a provision for an employee to take a refusal to grant flexible working conditions to the Fair Work Commission for determination. The FWA does however, protect an employee from an employer taking 'adverse action' against them for asserting a workplace right, in this case, the right to request flexible working conditions. These protections are set out in sections 340, 341 and 342 of the FWA.

Other entitlements

Your client may have additional entitlements. For example, many employees have access to special domestic violence leave under enterprise agreements. Your client should obtain legal advice about other possible employment entitlements.