

## **Important IR Development - Family and Domestic Violence Leave Clause commenced 1 August 2018**

As advised in the August Update, the new Family and Domestic violence clause was finalised by the Fair Work Commission at the end of July 2018. An identical common clause has now been inserted in all modern awards.

The effective date is the first complete pay period commencing on or after 1 August 2018.

The new clause inserted in all modern awards is as follows;

**Vehicle Manufacturing, Repair, Services and Retail Award 2010** (example of common clause inserted in all awards)

### **32A. Leave to deal with Family and Domestic Violence**

**32A.1** This clause applies to all employees, including casuals.

#### **32A.2 Definitions**

(a) In this clause:

**family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

**family member** means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in clause 32A.2(a) includes a former spouse or de facto partner.

#### **32A.3 Entitlement to unpaid leave**

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12-month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.  
2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

### **32A.4 Taking unpaid leave**

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

### **32A.5 Service and continuity**

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

### **32A.6 Notice and evidence requirements**

#### **(a) Notice**

An employee must give their employer notice of the taking of leave by the employee under clause 32A. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

#### **(b) Evidence**

An employee who has given their employer notice of the taking of leave under clause 32A must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 32A.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

### **32A.7 Confidentiality**

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 32A.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 32A prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

### **32A.8 Compliance**

An employee is not entitled to take leave under clause 32A unless the employee complies with clause 32A.

This determination comes into operation from 1 August 2018. In accordance with s. 165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 1 August 2018.

**Please note that this new clause currently applies to award staff only.**

However, the Federal Government is intending to introduce new legislation amending the National Employment Standards in the near future to extend the same entitlement to non - award staff.