

# Safe in the workplace: changes to the Fair Work Act



This fact sheet summarises the Ask LOIS webinar on this topic, presented by Pip David, Assistant Principal Solicitor, Women's Legal Services NSW on 29 April 2014. This webinar can be downloaded for free at [www.asklois.org.au/webinars/past-webinars](http://www.asklois.org.au/webinars/past-webinars).

## This fact sheet covers:

1. The impacts of domestic violence on employees and the workplace
2. The legal protections available to employees affected by domestic violence
3. How workplaces can ensure they have policies and best practice

## Domestic Violence as a Workplace Issue

- Approximately two thirds of women affected by violence in Australia are in paid employment;
- The 2011 National Domestic Violence and Workplace Safety Survey found that 30% of the respondents had experienced domestic violence;
- 19% of respondents to the survey who had experienced violence, said that the violence continued in the workplace – abusive phone calls, texts and emails and coming to the workplace

Many people experiencing violence find it follows them into their workplaces, putting their jobs at risk and safety at risk and endangering others. Domestic violence affects a person's participation in the workplace, including their ability to attend or stay at work, their work performance and their productivity.

## Impacts of violence within the workplace

Impacts on the victim of violence:

- Prevented from coming to work, delayed or may need to leave early;
- Threatening or abusive phone calls, texts or emails while at work;
- Abusive person may turn up at work threatening and abusing the victim;
- Required to take time off work to attend court hearings, appointments with solicitors and /or police, receive medical treatment, counselling or access family support services;
- Trauma, distraction, tired, unwell

Impacts on colleagues:

- Colleagues may be affected by witnessing threats or violence toward the victim
- Disruption and trauma

## Legal protections in employment

The Fair Work Act contains a protection in the form of a workplace **right to request** flexible working arrangements (section 65).

Flexible working arrangements include:

- Changing hours of work (eg working less hours or changing start or finish times)
- Changing patterns of work (eg working split shifts or job sharing)
- Changing the place of work (eg working from another office or working from home)

## Which employees are eligible to request flexible working arrangements?

Employees who:

- Have been employed with their current employer for at least 12 months (or for casuals – have been employed for at least 12 months and have regular and systematic shifts and are likely to continue in this pattern)

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- Are a parent or guardian of a child who is school age or younger
- Are carers
- Have a disability
- Are 55 years or older
- **Are experiencing domestic violence**
- **Are caring for or supporting an immediate family or household member who requires care or support because of domestic violence**

#### Formal requirements

- Request must be in writing
- Set out the details of the change requested and the reason why

#### Responding to the request

- Employers must respond in writing to the request within 21 days
- Must state whether the request is granted or refused
- Employer can only refuse on *reasonable business grounds*

#### Reasonable business grounds include the following:

- Too costly for employer
- No capacity to accommodate requested arrangements
- Impractical to change or recruit new employees
- Likely to result in significant loss in efficiency / productivity
- Likely to have significant impact on customer service

#### Protection from adverse action

While there is not a right to flexible working arrangements and no right of appeal against an employer's refusal to grant the request, the *Fair Work Act* does protect an employee from an employer taking adverse action against them for requesting flexible working arrangements.

*Adverse action* is taken by an employer against an employee if the employer threatens to, organises or takes action by:

- dismissing the employee
- injuring the employee in his or her employment
- altering the position of the employee to the employee's prejudice, or
- discriminating between the employee and other employees of the employer.

Employees can file a general protection application in the Fair Work Commission alleging the employer took adverse action against them because they sought to exercise a workplace right and the Fair Work Commission will decide whether the action was taken for what is called a prohibited reason or for another reason.

#### Why is this protection so important for employees affected by domestic violence?

- Employees have a legal right to request flexible working arrangements
- Flexible working arrangements can be a vital part of safety planning – changing work hours or location to increase safety (reducing chance of an employee being stalked)
- Employees are protected from “adverse action” after making a request for flexible working arrangements

- Employers are obliged to address the industrial issues of performance and safety for the employees affected by violence



### Steps a workplace can take to ensure a safe workplace

- 1. Identify domestic violence as a workplace issue**
  - paid leave to allow a person to see police, solicitors, arrange housing, attend court (ideal is to enshrine this right in an enterprise agreement)
- 2. Provide a supportive environment**
  - Offer flexible hours to break up regular patterns and / or offer work at a different location,
  - Change phone numbers / email addresses / other security measures
  - Have security to walk a person to their car
  - provide referrals to appropriate support services
  - provide access to an employee access program (EAP)
- 3. Recognise and respond to abusive behaviour**
  - call police and security if the violent person attends the workplace or contacts the employee in any other manner
  - make statements to police if required
  - make phone logs, CCTV footage etc available if required
- 4. Provide education and training on domestic violence**
  - discussions in the workplace mean domestic violence is not seen as a taboo topic
  - means employers and other colleagues are more likely to respond appropriately if an employee discloses domestic violence

### Further resources

Visit [www.dvandwork.unsw.edu.au](http://www.dvandwork.unsw.edu.au): how to guides, model policies, clauses for enterprise agreements, procedures and safety planning and resources information specific to employers and employees