

Changes to the Fair Work Act 2009

The Fair Work Act 2009 (Fair Work Act) is our primary national employment legislation which regulates minimum employment standard across the nation. The changes introduced are the most substantial changes to the Fair Work Act and our industrial relations laws since the introduction of the Fair Work Act approximately 13 years ago.

Every employer needs to become familiar with these changes and consider what they now need to change in terms of their staff engagement, compliance, and retention

processes, how they draft their employment contracts, the terms contained within company policies and procedures, and most importantly, how organisations will now manage staff remuneration, performance reviews, working arrangements and leave entitlements. These changes impact many components of the employer and employee relationship.

See below a summary overview of these changes to understand how they may impact your business.

EQUAL REMUNERATION	Now must consider "work value reasons" and these must be free of assumptions based on gender and include consideration of whether historically the work has been undervalued because of assumptions based on gender.
PROHIBITING PAY SECRECY	Employees will have a new workplace right to choose whether or not to disclose their remuneration and any terms or conditions of their employment that may determine remuneration outcomes. Pay secrecy clauses in new employment contracts will be prohibited. Pay secrecy clauses in existing employment contracts will have no effect.
PROHIBITING SEXUAL HARRASSMENT	Sexual harassment in connection with work will be prohibited and these changes are to operate concurrently with other anti-sexual discrimination legislation. The changes provide that a person must not sexually harass another person, defined as a "worker" in the workplace, which extends beyond just employees and includes any person conducting business with the workplace. The employer can be held vicariously liable for sexual harassment unless they can prove they have taken all reasonable steps to prevent the conduct.
ANTI DISCRIMINATION	Breastfeeding, gender identity, and intersex status are now new protected attributes under the anti-discrimination provisions of the Fair Work Act
FIXED TERM CONTRACTS	Employers will be prohibited from entering into a fixed-term contract that extend beyond a two-year period, or which contains the right to extend or renew the contract beyond a total of two years, or where the employee has previously been engaged on two consecutive contracts for the same or substantially similar work, some exceptions apply.
FLEXIBLE WORKING ARRANGEMENTS	The process employers must follow on receiving a request for flexible work arrangements has become more prescriptive. Employer must, within 21 days of receiving the request state whether the employer grants or refuses the request. Employer may only refuse the request on reasonable business grounds.
UNPAID PARENTAL LEAVE	An employee is now entitled to an extension of up to 12 months following the end of the available initial 12-month unpaid leave period.
BARGAINING & ENTERPRISE AGREEMENTS	Unions and employees can now compel employers to bargain for agreements covering multiple employees. The Fair Work Commission will have broader powers to intervene where prospects of reaching an agreement between employees and employers is low and will also have the right to authorise supported bargaining agreements for multiple employers across the same industry.
PAID FAMILY & DOMESTIC VIOLENCE LEAVE	Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Family & Domestic Violence Act) amends the Fair Work Act provisions which previously allowed for up to 5 days of unpaid family and domestic violence leave, to 10 days of paid leave per annum, which can be applied not only to permanent but casual employees also.

Do you need to find out more information on how these changes will effect or need to be applied to your business? Please contact us.

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