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GREG REIFFEL CONSULTING
HUMAN RESOURCES & INDUSTRIAL RELATIONS

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Quote of the Edition

"If you walked away from a toxic, negative, abusive, one-sided, dead-end low vibrational relationship or friendship-you won." Lalah Delia.

STOP PRESS: FWC Hands Down Domestic Violence leave (summary) decision.

AM2015/1 [2018] FWCFB 1691.

As part of its four-year review on Modern Awards, the ACTU, in 2017, argued for an unlimited or as a "fallback" 20 day paid leave for victims of domestic abuse/violence. The FWC rejected the paid leave, however called for submissions for unpaid leave.

This "Summary of Decision" is the forerunner of what will be a standard clause to be developed in the coming weeks that will include an entitlement to **five days leave at the start of each year - non-cumulative** (ie it will not accumulate from year to the next). As soon as I know, I will send you the standard clause.

Details to date

Introduction

One in four women in Australia have experienced family and domestic violence (almost 2.2 million women). Domestic and intimate partner homicides represent the highest proportion of any category of homicides in Australia. At least one woman a week is killed by a partner or former partner. Family and domestic violence is the leading contributor to death, disability and ill-health among Australian women aged between 15 and 44.

Such violence not only affects those who suffer it, but the children who are exposed to it, extended families, friends and work colleagues. It is an issue that impacts on workplaces and which requires specific action.



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There is no single generally accepted definition of family and domestic violence, but at the core of family and domestic violence is the perpetrator's need to maintain control and dominance over the victim.

The Full Bench accepted that family and domestic violence is a gendered phenomenon that disproportionately affects women, and that women are more likely than men to:

- be subjected to frequent, prolonged and extreme violence;
- be sexually assaulted;
- sustain injuries;
- fear for their lives; and
- experience other negative consequences, such as psychological harm.

The Findings

1. Family and domestic violence has a significant adverse impact on those who experience such violence.
2. While men can, and do, experience family and domestic violence, such violence is a gendered phenomenon that disproportionately affects women.
3. The effects of family and domestic violence are far reaching and extend beyond the individual directly affected; to their families and the general community.
4. Family and domestic violence has a real and tangible impact on employees and employers in the workplace.
5. Employees who experience family and domestic violence often face financial difficulties as a result, such as relocation costs or becoming a sole parent; and may suffer economic harm as a result of disruption to workplace participation.

The entitlement to unpaid leave

The Full Bench went on to address a number of matters relating to access to the entitlement to five days' unpaid leave, and decided that the unpaid leave entitlement:

- Will be additional to other forms of leave (whether paid or unpaid);
- will apply to *all* employees (including casuals);
- will be available in full at the commencement of each 12-month period rather than accruing progressively during a year of service;
- will not accumulate from year to year; and
- will be available in full to part-time and casual employees (i.e. not pro-rated).



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What it means for your organisation

If you already have domestic violence leave as a policy (whether paid or unpaid), then take notice of the model award clause, and later the clause where your policy does not cover off areas in the policy.

If it is contained in an EBA, no action needs to be taken, however if it falls short of the model clause, then you **may** alter the EBA – too much paperwork – if necessary do it by policy.

No policy? Then develop one, based on the model clause.

Commentary

This is something that goes back generations (I know: it effected my own family only one generation ago*). I think it is a sad indictment on our society that we must provide leave in in the workplace to help those most vulnerable.

It is my hope that the “law of unintentional consequences” does not make a domestic situation, public knowledge and/or cause derision against any person who needs to avail themselves of such leave.

*The coppers paid him a visit and gave him a good belting.

Until next time....

Greg Reiffel
Principal Consultant