

DOMESTIC VIOLENCE

INFORMATION SHEET



DOMESTIC VIOLENCE REQUESTS FOR FLEXIBILITY AND LEAVE

This factsheet provides guidance for Employers on how to respond to requests from employees who have been affected by domestic violence for a variation to their working arrangements and /or requests for Domestic Violence Leave which become a statutory right for employees on and from 1 April 2019 following the introduction of the Domestic Violence - Victims' Protection Act 2018.

WHICH TEAM MEMBERS DOES THIS FACT SHEET APPLY TO?

This fact sheet only applies to any employee who has been affected by domestic violence, whether that took place while an employee or prior to becoming an employee with their current employer.

WHO IS A PERSON AFFECTED BY DOMESTIC VIOLENCE?

Under the Domestic Violence – Victim's Protection Act 2018, a "person affected by domestic violence" is someone who is either both or one of the following:

- A person against whom any other person inflicts, or has inflicted, domestic violence;
- A person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted, domestic violence.

WHAT VARIATIONS TO WORK ARRANGEMENTS CAN AN EMPLOYEE REQUEST?

An employee, or someone acting on the employee's behalf, may request, at any time, either a short-term variation (which is set as being 2 months or shorter) to their working arrangements under Part 6AB of the Employment Relations Act 2000 (the Act), or a permanent or longer than 2-month temporary variation under Part 6AA of the Act for the purposes of assisting them deal with the effects of being a person affected by domestic violence.

For both a short-term or permanent request, this must be in writing and state:

- the employee's name; and
- the date on which the request is made; and
- that the request is made under Part 6AB (for a short-term request) or Part 6AA (for a permanent request) of the Employment Relations Act; and
- specify the variation of the working arrangements requested and the period of time (which must be no longer than 2 months) for which the variation is requested; and
- specify the date on which the employee proposes that the variation take effect and the date on which it is proposed that the variation end; and
- specify how, in the employee's view, the variation will assist the employee to deal with the effects of being a person affected by domestic violence; and
- explain, in the employee's view, what changes, if any, you may need to make to your current work arrangements if the employee's request is approved.

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Employees affected by domestic violence may request the following variations to their working arrangements:

- the location of their workplace
- the duties they perform
- the extent of their contact details that they must provide to you; and
- any other term of their employment agreement not already covered by the above or the current Section 69AAA of the Employment Relations Act 2000 (which covers hours of work, days of work and place of work) and that in the employee's view needs variation to enable the employee to deal with the effects of being a person affected by domestic violence.

These arrangements are to help the employee protect themselves from being contacted or harassed by the party that has or is inflicting violence upon them.

HOW MUST YOU RESPOND TO THESE REQUESTS?

You must deal with a request as soon as possible, but **not later than 10 working days** after receiving it and you must notify the employee in writing of whether their request has been approved or refused.

In, or before, giving the notification under subsection, you must provide the employee with information about appropriate specialist domestic violence support services. This can include referring the employee to an Employee Assistance Programme.

You may request that the employee provides you proof that they are a person affected by domestic violence for the purposes of a request made by or on behalf of the employee for a short term (less than 2 months) variation to their working arrangements.

However, you may only require this proof if you inform the employee **as early as possible** that the proof is required and do so **within 3 working days** after you received the request.

If you do not deal with a request within 10 working days, the request may be referred to a Labour Inspector, mediation or the Employment Relations Authority.

The request is not limited to domestic violence that occurred or occurs during the employee's employment with their current employer, nor does making a short-term variation request prevent the employee requesting a permanent or fixed period variation of longer than 2 months.

ON WHAT GROUNDS MAY REQUESTS BE DECLINED?

There are only two grounds for declining a request. If you do decline a request, you must inform the employee in writing setting out:

- that the request is refused because of one or both grounds specified in section 69ABF(1)(a) and (b) of the Act; and
- the ground or grounds for refusal; and
- explain the reasons for that ground or those grounds.

You may only refuse a request if you determine one or both of the following:

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- that proof of being affected by domestic violence, when requested, was not produced within 10 working days after you received the request: and/or
- that the request cannot be accommodated reasonably on one or more of the following non-accommodation grounds:
 - (i) inability to reorganise work among existing staff:
 - (ii) inability to recruit additional staff:
 - (iii) detrimental impact on quality:
 - (iv) detrimental impact on performance:
 - (v) insufficiency of work during the periods the employee proposes to work:
 - (vi) planned structural changes:
 - (vii) burden of additional costs:
 - (viii) detrimental effect on ability to meet customer demand.

You must not refuse a request just because the request is from an employee who is bound by a collective agreement; the request relates to working arrangements to which the collective agreement applies; and the employee's working arrangements would be inconsistent with the collective agreement if you were to approve the request.

DOMESTIC VIOLENCE LEAVE

On and from 1 April 2019 employees who are affected by domestic violence will be able to apply for domestic violence leave to assist them deal with the effects of domestic violence.

From 1 April 2019, an employee affected by domestic violence may take up to 10 days' domestic violence leave after they have completed six months' current continuous employment with their employer.

This means an employee's entitlement to domestic leave arises from the beginning from the end of the 6-month anniversary of commencing their employment and each subsequent 12-month period of employment, provided they work at least an average of 10 hours per week in the period AND no less than 1 hour in every week during that period or no less than 40 hours per month in the period.

Domestic violence leave may be taken as single days or as a block of leave.

Any domestic violence leave that is not taken DOES NOT carry forward from one 12-month period to the next.

FOR MORE ADVICE

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