

# Family and Domestic Violence and Employment Law

**JobWatch**  
Employment Rights Legal Centre

Family and domestic violence can happen to anyone, however it is most commonly committed by men against women. This Fact Sheet is primarily designed for women experiencing family and domestic violence to highlight its interaction with particular employment rights.

## Family and domestic violence leave

The National Employment Standards (NES) in the *Fair Work Act 2009* provide **10 days** paid leave per year to all national system employees (including casuals) experiencing domestic and family violence. This entitlement is available for employees of non-small business employers (15 or more employees) from 1 February 2023, and for employees of small business employers (less than 15 employees) from 1 August 2023.

The leave is available in the event an employee needs to do something to deal with the impact of the domestic and family violence and it is impractical for them to do it outside their ordinary hours of work.

The paid leave entitlement:

- is available in full at the commencement of each 12-month period (rather than accruing progressively during a year of service);
- does not accumulate from year to year; and
- is available in full to part-time and casual employees (i.e. not pro-rata).

Family and domestic violence under the NES means violent, threatening or other abusive behaviour by an employee's family member that seeks to coerce or control the employee and causes them harm or fear. A family member includes:

- an employee's:
  - spouse or former spouse
  - de facto partner or former de facto partner
  - child
  - parent
  - grandparent
  - grandchild
  - sibling
- an employee's current or former spouse or de facto partner's child, parent, grandparent, grandchild or sibling, or
- a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

There are notice and evidence requirements that you must meet to take this leave. Notice must be given 'as soon as practicable'. Your employer has obligations to ensure that any evidence you provide is kept confidential.

**Note!** Read this Fact Sheet in conjunction with JobWatch's other Fact Sheets – 'Workplace Bullying', 'General Protections Dispute – Non-Termination claim', 'Unfair Dismissal' and 'General Protections Dispute – Termination claim'.

## Disclaimer

This Fact Sheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This Fact Sheet is designed for employees and prospective employees in Victoria, Tasmania and Queensland only. If you are not from these states, you should obtain advice about your specific case as soon as possible.

## Requests for flexible working arrangements

Flexible working arrangements can include taking time off work to do something to deal with domestic and family violence such as going to court, the doctor or moving house. Flexible working arrangements may also include working from home, working part-time, flexible start and finish times or job sharing. It may occur as a one-off, occasionally, for a fixed period of time or indefinitely.

### Making your request

If you are a national system employee, you can request flexible working arrangements under the National Employment Standards in the *Fair Work Act 2009* if you are:

- a permanent employee with at least 12 months of continuous service; or
- a long term casual with a reasonable expectation of continuing employment on a regular and systematic basis who has been employed on that basis for at least 12 months.

**AND** you would like to change your working arrangements because you are:

- experiencing violence from a member of your family; or
- providing care or support to a member of your immediate family or household who requires care or support because they are experiencing violence from a family member.

Requests need to be in writing and set out details of the change sought and the reasons for the change.


### Employer's refusal of your request

Your employer must give you a written response to your request within **21 days**, stating whether they grant or refuse your request. Your employer can refuse your request only on reasonable business grounds. If your employer refuses your request, your employer's written response must include details of the reasons for the refusal. Some examples of reasonable business grounds include:

- it would be too costly for your employer;
- there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
- it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by you;
- it would be likely to result in a significant loss in efficiency or productivity; and
- it would be likely to have a significant negative impact on customer service.

If you don't agree with the employer's response and can't find a solution at the workplace level, you have the option of filing a dispute with the Fair Work Commission, who can hear and make orders about disputes about flexible working arrangement requests.

Employers may have additional obligations in relation to requests for flexible working arrangements under an applicable Modern Award. Contact the Fair Work Ombudsman for more information.



**Note!**  
If your employer dismisses you or takes other adverse action against you because you made the request, you may have a number of legal options (see below).

## Workplace Health and Safety

The effects of family and domestic violence could have implications for workplace health and safety (WHS). Generally speaking, employers have an obligation to, 'so far as is reasonably practicable, provide and maintain for employees... a working environment that is safe and without risks to health'. In certain circumstances involving family and domestic violence, your employer may need to take appropriate action to provide you with a healthy and safe workplace. If you have any concerns, contact WorkSafe in your state.

**For example:** *Kathleen's domestic partner stalks her and makes abusive phone calls to her whilst she is at work.*

## Workplace Bullying

Under the *Fair Work Act 2009*, workplace bullying occurs when 'an individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers and the behaviour creates a risk to health and safety'.

However, reasonable management action conducted in a reasonable manner does not constitute workplace bullying.

Situations of workplace bullying could arise where you work in the same workplace as your domestic partner or are bullied by a fellow employee as a result of your experience of family and domestic violence. In such circumstances, you may be able to apply for a 'stop bullying order'.

## Discrimination

If you have been discriminated against by your employer, you may be able to make a discrimination complaint, on the basis of employment activity, family or carer status, or an unreasonable refusal to accommodate family responsibilities, within **24 months** of the discriminatory conduct under federal legislation, or **12 months** under state legislation.

## Adverse Action

Adverse action by an employer is unlawful if it is taken because of one or more protected grounds including 'workplace rights' and 'family responsibilities'. In these circumstances, you may be able to file a General Protections Dispute – Non-Termination claim within **6 years**, because making your request may constitute a 'workplace right'. You can also consider making a complaint to the Fair Work Ombudsman. Here are some examples:

**For example:** *Jane's employer hears that she is considering making a request for flexible working arrangements. As a result, he overlooks her for a promotion. This is an example of adverse action taken by an employer because the employee proposed to exercise a workplace right.*

**For example:** *Kim takes two days of family and domestic violence leave. Upon Kim's return, her working hours are permanently reduced. This is an example of adverse action taken by an employer because the employee exercised a workplace right.*

### Fair Work Ombudsman

**Phone:** 13 13 94

**Website:**  
fairwork.gov.au

### WorkSafe Victoria

**Phone:** 1800 136 089

**Website:**  
worksafe.vic.gov.au

### WorkSafe Queensland

**Phone:** 1300 362 128

**Website:**  
worksafe.qld.gov.au

### WorkSafe Tasmania

**Phone:** 1300 366 322

**Website:**  
worksafe.tas.gov.au

Read JobWatch's 'Workplace Bullying', 'Carer, Parent and Family Discrimination' Fact Sheets for more information.

## Termination of Employment

### Unfair Dismissal

For a dismissal to be 'unfair', it must be considered either 'harsh, unjust or unreasonable' and not a case of genuine redundancy. A number of factors are taken into account in deciding this including whether there was a valid reason for your dismissal, whether there was procedural fairness and any other relevant matters.

Family and domestic violence could be taken into account, weighing towards the dismissal being seen as 'harsh', particularly if the employer is aware that you are experiencing family and domestic violence. Additionally, family and domestic violence and related issues may not be a valid reason for dismissal in relation to your capacity or conduct at work.

There are a number of eligibility criteria which must first be met.

### General Protections Dispute – Termination claim

It is also unlawful to terminate your employment because of a protected ground. Examples may include the following:

***For example:** Jane's employer hears that she is considering making a request for flexible working arrangements. As a result, the employer terminated her employment.*

***For example:** Kim takes family and domestic violence leave. Upon Kim's return from this leave, her employment is terminated.*


### Temporary absence from work due to illness or injury

Termination on the basis of a temporary absence from work due to illness or injury, may also be the subject of a General Protections Dispute – Termination claim.

A temporary absence is an absence of not more than 3 months, either in a single block or in separate periods, within 12 months. Any period of absence in excess of this is not protected unless you were on paid sick leave for the duration of the absence.

You must file this claim at the Fair Work Commission within **21 days** of the date your dismissal took effect.

Read JobWatch's 'General Protections Dispute - Non-Termination claim', 'Unfair Dismissal' and 'General Protections Dispute - Termination claim' Fact Sheets for more information.



**Note!**  
Unfair dismissal and General Protections Dispute - Termination claims must be filed at the Fair Work Commission within 21 days of your dismissal taking effect.

## Where to get help

### JobWatch's free and confidential Telephone Information Service

**P:** (03) 9662 1933 (Melb Metro), 1800 331 617 (Regional Vic, Qld, Tas)

**W:** [jobwatch.org.au](http://jobwatch.org.au)

Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94
Fair Work Commission	1300 799 675
1800RESPECT	1800 737 732
Lifeline	13 11 14
Beyond Blue	1300 22 4636
Safe Steps Family Violence Response Centre (Victoria)	1800 015 188
Sexual Assault Crisis Line (Victoria)	1800 806 292
inTouch Multicultural Centre Against Family Violence (Victoria)	1800 755 988
DV Connect Womensline (Queensland)	1800 811 811
Sexual Assault Help Line (Queensland)	1800 010 120
Family Violence Response & Referral Line (Tasmania)	1800 633 937
Family Violence Counselling and Support Service (Tasmania)	1800 608 122
WorkSafe Victoria	1800 136 089
WorkSafe Queensland	1300 362 128
WorkSafe Tasmania	1300 366 322
Australian Human Rights Commission	1300 656 419
Community Legal Centres Australia	02 9264 9595
ACTU Worker Information line (for referral to a union)	1300 362 223
Law Institute of Victoria's Legal Referral Service	03 9607 9311
Queensland Law Society (for referral to a lawyer)	1300 367 757
Law Society of Tasmania (for referral to a lawyer)	03 6234 4133

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JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.