

(Fair Work Act 2009)

84 Return to work guarantee

On ending unpaid parental leave, an employee is entitled to return to:

- (a) the employee's pre-parental leave position; or
- (b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

(Fair Work Act 2009)

83 Consultation with employee on unpaid parental leave

If:

- (a) an employee is taking a period of unpaid parental leave, other than flexible unpaid parental leave; and
- (b) the employee's employer makes a decision that will have a significant effect on the status, pay or location of the employee's pre-parental leave position;

the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on that position.

(Fair Work Act 2009)

Division 4—Requests for flexible working arrangements

65 Requests for flexible working arrangements

Employee may request change in working arrangements

(1) If:

- (a) any of the circumstances referred to in subsection (1A) apply to an employee; and
- (b) the employee would like to change his or her working arrangements because of those circumstances;

then the employee may request the employer for a change in working arrangements relating to those circumstances.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(1A) The following are the circumstances:

- (a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- (c) the employee has a disability;
- (d) the employee is 55 or older;
- (e) the employee is experiencing violence from a member of the employee's family;
- (f) the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

- (1B) To avoid doubt, and without limiting subsection (1), an employee who:
- (a) is a parent, or has responsibility for the care, of a child; and
 - (b) is returning to work after taking leave in relation to the birth or adoption of the child;
- may request to work part-time to assist the employee to care for the child.
- (2) The employee is not entitled to make the request unless:
- (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
 - (b) for a casual employee—the employee:
 - (i) is, immediately before making the request, a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and
 - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.
- (2A) For the purposes of applying paragraph (2)(a) in relation to an employee who has had their employment converted under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that paragraph.

Formal requirements

- (3) The request must:
- (a) be in writing; and
 - (b) set out details of the change sought and of the reasons for the change.

Agreeing to the request

- (4) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.
- (5) The employer may refuse the request only on reasonable business grounds.
- (5A) Without limiting what are reasonable business grounds for the purposes of subsection (5), reasonable business grounds include the following:
- (a) that the new working arrangements requested by the employee would be too costly for the employer;
 - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
 - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
 - (d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;

(e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

(6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

66 State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to flexible working arrangements, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.