

(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.