

Further information

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Employment Relations (Flexible Working Arrangements) Amendment Bill

The Employment Relations (Flexible Working Arrangements) Amendment Bill has recently passed the Select Committee stage and is progressing towards being enacted into law.

The Bill is proposed by Green MP Sue Kedgley. It seeks to give employees the right to ask for "flexible working arrangements" from their employers and may have a profound effect on the future shape of New Zealand workplaces. This Employment Update summarises the Bill and discusses what it might mean for employers.

Purpose of the Bill

The stated purpose of the Bill is:

"to provide a statutory right to employees who meet specified criteria as to the period of their employment to request a variation of certain terms and conditions of their working arrangements because they provide care of certain persons; and place certain duties on employers who receive those requests"

What are Flexible Working Arrangements?

Flexible working arrangements can mean flexible starting and finishing times, job sharing, part time work, compressed working weeks, working during school terms only and any other arrangements proposed by the employee that will enable them to better care for their dependants.

How do Flexible Working Arrangements come into effect?

If an employee seeks flexible working arrangements, they would need to follow the process outlined in the Bill. The first step would be to make a formal request to the employer outlining the arrangement that they are proposing.

Employers would not be compelled to accept such a request, but they must consider it against the criteria outlined.

Ability to make a request

Under the Bill, an employee must have been working for the employer for at least six months, for on average not less than 10 hours per week and for not less than 1 hour a week or 40 hours a month, before they can make a request for flexible working arrangements.

Employees who satisfy this test could then make a request to their employer for a variation of their working arrangements, which relates to the care of a –

- child or children under 5 years;
- disabled child or children;
- dependant relative or relatives.

Employers are not compelled to accept a request but must consider it against set criteria

The request would need to be in writing and contain the detailed specifics in support of the request. This includes the variation of the working arrangements requested, their likely start date and whether the variation is permanent or for a period of time.

According to the Bill, the employee would also be required to explain how the variation will enable the employee to provide better care for the dependant person concerned and what changes the employer may need to make in the workplace.

Limits on requests

Once an employee has made a request (whether it is accepted by the employer or not) they would not be able to make another request for 12 months after the date on which the previous request was made.

Dealing with a request for Flexible Working Arrangements

The Bill stipulates that an employer would be required to deal with the request as soon as possible, but not later than 3 months after receiving it.

The employer would not be compelled to accept the request. A refusal would however need to be on the basis that the request cannot be “reasonably accommodated” because there is:

- an inability to reorganise work among existing staff
- an inability to recruit additional staff
- a detrimental impact on quality
- a detrimental impact on performance
- an insufficiency of work for the periods the employee wants to work
- planned structural changes
- a burden of additional costs
- a detrimental effect on ability to meet customer demand
- the potential to undermine the terms of a collective agreement where the work done by the employee making the request comes within the coverage clause of the collective agreement.

The employer would need to give the employee written notice of their decision. Where the request is refused, they would need to outline the grounds for refusal and provide “sufficient explanation” of the reasons for that refusal.

Employee complaints arising from refusal

If the employee is unhappy with a request for flexible working arrangements being rejected by the employer, they will be able to refer the matter to a Labour Inspector who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter. How this will work and what it will entail in practice is not yet clear.

If after working through the process with the Labour Inspector the employee remains dissatisfied with the outcome, the issue can then be referred to mediation, where it will be treated as if it were an “employment relationship problem”.

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This newsletter has been prepared by Minter Ellison Rudd Watts. Professional advice should be sought before applying the information to particular circumstances.

Should mediation also not resolve the matter, the employee will be able to apply to the Employment Relations Authority for a determination of whether the employer has complied with its requirements. This application must be made within three months after the date on which the employer notified the employee that the request was refused.

It is important to note that the three month time limit for pursuing the problem in the Employment Relations Authority begins at the date of the employer's refusal, so does not make any allowance for time taken up by the Labour Inspector and mediation processes. However, there is scope within the Bill for an extension of time where compliance with this timeframe is not "reasonably practicable".

The Employment Relations Authority will be able to make a determination that the employer has not complied with the requirements of the Bill (if enacted) and an order requiring the employer to reconsider the employee's request. If the Authority makes such an order, it will also be able to make an award of compensation to the employee for an amount of up to 8 weeks of the employee's pay.

Conclusion

Should the amendments be made to the Employment Relations Act as proposed in this Bill, there may be significant changes to the way in which both employees and employers are called upon to balance work and other commitments from 1 July 2008.

The Bill has been returned to the House with a Select Committee recommendation that it proceeds to a second reading. We will continue to keep you updated on the progress of this Bill.

If you have any questions regarding this Amendment Bill and how it will impact on your organisation, please do not hesitate to contact us for assistance.