

FLEXIBLE WORKING ARRANGEMENTS - In Force 1 July 2008

The *Employment Relations (Flexible Working Arrangements) Amendment Act 2007* comes into force on 1 July 2008. We have recapped the changes below, to ensure you are up to speed with its requirements. First and foremost, the Act means that employers will need to give serious consideration to employee requests for flexible working hours.

Flexible working arrangements can range from having flexible starting and finishing times, doing job sharing, part-time work, compressed working weeks, or working in term time only, right through to arrangements such as working from home. **This new legislation provides eligible employees with the statutory right to request changes to their working arrangements if they have the care of any person.**

WHICH EMPLOYEES ARE ELIGIBLE TO REQUEST FLEXIBLE WORKING ARRANGEMENTS?

For an employee to be eligible to make a request for flexible working arrangements they must have been employed by their employer for **no less than six months**.

WHAT MIGHT A REQUEST INVOLVE?

Requests from employees may be in relation to working arrangements for:

- Hours of work, and/or
- Days of work, and/or
- Place of work (e.g. if the employee wants to work from home instead of their usual place of work).

HOW DO I DEAL WITH A REQUEST?

- Requests must be received by an employer in writing, including (among other details) an explanation on how the variation will enable the employee to better care for the person concerned, and an explanation in the employee's view as to what changes the employer may need to make if the request is approved.
 - An employer must deal with any request received from an employee for flexible working arrangements and notify the employee if their request has been accepted or refused **within three months of receiving the request**.
 - If the request is refused, the employer must notify the employee of the reasons the request was refused, specifically, that they were ineligible and/or because the request cannot be accommodated on specific grounds set out in the legislation. Some examples of these grounds are: inability to re-organise work among existing staff; burden of additional costs; detrimental impact on quality, performance and/or ability to meet customer demand.
 - If a request for flexible working arrangements is accepted or refused, the employee will not be entitled to make another request for flexible working arrangements any earlier than 12 months after the previous request was made.
- !** *It is important to note that a request must be refused if the employee is party to a collective agreement and if the requested working arrangement would be inconsistent with the working arrangements to which the collective agreement applies, if it was to be approved.*

RESOLVING DISPUTES OVER REFUSAL FOR FLEXIBLE WORKING ARRANGEMENTS:

When an employer refuses an employee's request for flexible working arrangements and the employee is dissatisfied with the reasoning and grounds of the refusal, the employee may refer this to a Labour Inspector who must assist (where practicable) the employer and employee to resolve the matter.

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If matters are still unresolved with the assistance of the Labour Inspector and the employee is unhappy with the result they may then refer the refusal to mediation. Likewise, if this is not resolved at mediation, an employee may apply to the Authority for a determination as to if the employer has complied with their requirements under the legislation. Any application made to the Authority must be done within twelve months of the date on which the employer notified the employee that their request was refused.

Where the Authority determines that an employer has not dealt with the request for flexible working arrangements in accordance with the Act, the Authority may make an order for the employer to reconsider the employee's request and make an award or compensation to be paid by the employer to the employee. Any award made by the Authority is capped at an amount of up to \$2000.

WHAT DOES THIS MEAN FOR YOU?

Employers now have until **1 July 2008** to plan and prepare for potential requests for flexible hours. If you haven't already, you may want to start considering:

- What flexible work arrangement options would actually suit your business, if any?
- Do you need to consider what support resources are available?
- Is it necessary to look at increasing the cross-training of your staff generally to improve cover options and increase business flexibility?
- What areas can you *not* accommodate changes to hours of work, and why exactly?

Our team is happy to help with any questions about this new legislation - just get in touch.

"GIMME A BREAK!" - Breaks & Breastfeeding Bill Proposed

The *Employment Relations (Breaks & Infant Feeding) Amendment Bill* has just been through its first reading in Parliament. It aims at:

1. **Creating minimum standards in relation to the provision of meal and rest breaks to employees, those being:**
 - One 10-minute rest break if they have worked 4 hours or less;
 - One 10-minute rest break and one 30-minute meal break if they have worked more than 4 hours but not more than 6 hours; and
 - Two 10-minute rest breaks and one 30-minute meal break if they have worked more than 6 hours but not more than 8 hours.
2. **Promoting infant feeding through breastfeeding, by requiring employers to provide facilities and breaks** for employees who wish to breastfeed (including expressing milk), where this is reasonable and practicable (considering operational environment and resources).

At a minimum, rest breaks will be paid, while meal breaks can be unpaid. Breastfeeding breaks will be unpaid. (In all cases, the employee and employer can agree to enhanced or additional entitlements, and may even already be fulfilling these requirements and more).

If an employee has worked for more than 8 hours, the requirements above will apply as if their work period had started again at the end of the eighth hour. The Bill also gives guidelines for when these breaks should be taken, though alternative times can be agreed between the parties.

Breastfeeding breaks are intended to be in addition to the meal and rest breaks, though again, the parties can agree that the breastfeeding breaks be taken in the same break as a meal or rest break. In such cases, the 'combined' break should be paid if it coincides with what would have been a 'rest break' (if it had been taken separately).

We'll keep you posted for any developments to this, but please contact us if you have any questions.