

The Domestic Violence – Victims’ Protection Act 2019

Background

The Domestic Violence – Victims’ Protection Act came into effect on 1 April 2019. The law entitles employees affected by domestic violence to up to 10 days of paid domestic violence leave per year, in order to deal with the effects of domestic violence. Employees will be able to take this leave as needed – similar to the existing sick leave and bereavement leave provisions.

They will also be able to request a short-term variation to their working arrangements (up to two months or shorter) to which the employer must respond to urgently and within 10 working days. The variation can include changes to hours of work, location and duties of work. This is similar, and in addition to, the existing rights employees have to make a flexible working request.

The law also explicitly prohibits an employee being treated adversely in their employment on the grounds that they are, or are suspected to be, a person affected by domestic violence.

Employees will be able to raise a dispute if they believe that their employer unreasonably refused a request made under the new provisions, and must do so within six months.

Flexible working arrangements

The Act widens the usual provisions for requesting flexible arrangements so that employees affected by domestic violence can seek a change to working arrangements, including the location of the employee’s workplace, the employee’s duties, the contact details that must be provided to the employer, or any other term that an employee considers needs variation to enable the employee to deal with the effects of being affected by domestic violence.

The Act also inserts a new section into the Employment Relations Act which provides for flexible working short term (two months or less) for people affected by domestic violence. A person affected by domestic violence can be a person who has suffered domestic violence, or a person who fully or sometimes resides with a child who has suffered domestic violence. Again, flexible working may include changes to hours or days of work or place of work (such as at home), as well as location of the workplace, duties, contact details and any other term the employee considers needs variation to enable the employee to deal with the effects of domestic violence.

The request needs to be put in writing and there is no requirement that domestic violence be currently happening, if it has occurred to the person in the past. A request needs to specify the dates the changes requested would apply for and how the variation would assist the employee with dealing with the effects of domestic violence. The employee is also required to explain what changes, if any, the employee thinks the employer might need to make to their arrangements if the request is approved.

The employer may request the employee to provide proof that the employee is a person affected by domestic violence. A request for proof must be made within 3 working days of receiving the request, and the employee has to provide the evidence within 10 working days of the employer receiving the request from the employee.

The employer needs to deal with a short term request more quickly (as soon as possible, and within 10 working days, rather than within a month), and the employer must reply in writing. Before or at the time of replying to the request, the employer must also provide information to the employee about appropriate specialist domestic violence support services.

A request can only be refused where proof of domestic violence has been requested and not provided, or the request cannot be reasonably accommodated on certain grounds. Those grounds are:

- Inability to reorganise work amongst existing staff
- Inability to recruit additional staff
- Detrimental effects on quality or performance
- Insufficient work during the periods the employee proposes to work
- Planned structural changes
- The burden of additional costs
- A detrimental effect on the ability to meet customer demand

These are the same grounds that an employer can refuse a longer term request, but, unlike the longer term request provisions, the employer cannot refuse a request just because the employee is bound by a collective agreement and the working arrangements proposed would be inconsistent with the collective agreement. This means that a short term request for flexible working arrangements can override a collective agreement where it applies to a person affected by domestic violence.

If the employer refuses the request, the employer must state that the request is declined due to one (or both) of the grounds specified in section 69ABF(1) (a) and (b), state the grounds for refusal and explain the reason for that ground.

Making a short term request doesn't preclude an employee from making a request for a permanent or longer change to their working arrangements.

The disputes provisions are different, as the employee doesn't have to go through the process of raising it with a Labour Inspector and attending mediation prior to making an application to the Employment Relations Authority – the employee can choose any of those options, meaning that the matter could be fast tracked to the Authority.

Discrimination against people affected by domestic violence

An employee will be able to take a personal grievance on the basis that they have been treated adversely because they are, or are suspected to be, a person affected by domestic violence. This means that if an employer discriminates against, disadvantages or dismisses an employee because they are a person affected by domestic violence, this will be a breach of the Employment Relations Act.

The Human Rights Act is also amended to make it unlawful to discriminate in employment due to the person being, or suspected or assumed or believed to be, a person affected by domestic violence. This means that if an employer does not offer employment to a person because they believe them to be a person affected by domestic violence, this is unlawful discrimination.

Domestic violence leave

The Act provides for the amendment of the Holidays Act to provide for domestic violence leave to assist employees deal with the effects of being a person affected by domestic violence.

As with sick leave, the employee must work for the employer for six months before they become entitled to domestic violence leave, and the entitlement is 10 days per year. As with sick leave, domestic violence leave can be taken in advance, where the employer agrees to this. Unused domestic violence leave does not accumulate.

Domestic violence leave is on pay where it is taken on a day that would otherwise be a working day for the employee, and is paid at relevant daily pay or average daily pay (as with sick or bereavement leave). The employer can require proof that the employee is a person affected by domestic violence and if the employee does not supply that proof, the employer does not need to pay them for the leave until proof is provided.

As with sick leave, the employee must notify the employer as early as possible before they are due to start work, or if that is not practicable, as early as possible after that time.

As with bereavement leave, if an employee is on annual leave and becomes entitled to take domestic violence leave, this is taken instead of annual leave. As with sick and bereavement leave, if the employee has exhausted their domestic violence leave entitlement, the employer may allow the employee to use their annual leave.

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Extracts from this advisory have been taken from the Employment New Zealand website and also information provided by Employer Associates

<https://www.employment.govt.nz/about/news-and-updates/domestic-violence-victims-protection-bill-becomes-law/>

Need more help?

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