



FAMILY AND DOMESTIC VIOLENCE LEAVE

On International Women's Day, we should strive to celebrate women's achievements and continue to ensure their rights are protected. Unfortunately, family and domestic violence in Australia predominantly affects women and affects the economy and businesses. By Panetta McGrath's Jenny Edinger and Morgan Barnsby

Family and domestic violence is a national health concern that has wide-ranging effects across society. Violence in the home not only impacts the individuals' physical and psychological health but also threatens their ability to hold a job by disrupting their employment with time taken to recover or attend court. Additionally, it precludes individuals from full workplace participation and prevents them from providing for their loved ones as many believe resignation is the only option.

A report by KPMG estimated that the cost of violence against women and children to the Australian economy was an estimated \$22 billion, of which \$860 million was from "absenteeism from paid or unpaid work and the inability to perform household tasks and voluntary work".

Predominantly, women are the victims of these acts of violence, with 1 in 6 women, and 1 in 16 men, having experienced physical or sexual violence by a current or previous partner since the age of 15. It is also the leading cause of death, disability and illness in women between the ages of 15 and 44, with an average of one woman a week

killed in Australia. Furthermore, 2 out of 3 women in the workforce are affected by family and domestic violence. These alarming statistics are only the tip of the iceberg and show just how vulnerable females are to the effects of family and domestic violence.

And so, in an age where female employment is at a record high and the pay gap is low, the Australian Government has amended the Fair Work Act 2009 (Cth) (FW Act) to provide entitlements for unpaid family and domestic violence leave. These amendments also ensure consistency with the national system, after several industry and occupation awards inserted a five day unpaid family or domestic violence leave clause. However, this clause is not applicable to all employees, only those whose employment is covered by the specific awards.

Therefore, the FW Act amendments enshrine a minimum standard of unpaid family and domestic violence leave for all Australians covered by the FW Act. This supports employees experiencing family and domestic violence by allowing them to deal with the consequences without fear of losing their job. It alleviates the stress of financial insecurity and economic

disadvantage that is a common consequence of domestic violence. Most importantly, this entitlement extends to full time, part time or casual employees and cannot be accessed by perpetrators of family and domestic violence.

ENTITLEMENT TO LEAVE

Section 106A of the FW Act entitles an employee to five days of unpaid family and domestic violence leave within a 12-month period. This is available in full at the start of each 12-month period and does not accumulate. Additionally, an employer and employee are not precluded from agreeing that the employee may take more than five days leave.

Under section 106B an employee may take unpaid family and domestic violence leave if:

- The employee is experiencing family and domestic violence; and
- The employee needs to do something to deal with the impact of the family and domestic violence; and
- It is impractical for the employee to do that thing outside the employee's ordinary hours of work.

The legislation would allow individuals affected by family and domestic violence to take leave to:

- Seek support and counselling;
- Access police services;
- Attend court hearings;
- Make arrangements for their own safety; or
- Relocate themselves or a family member.

WHAT IS FAMILY AND DOMESTIC VIOLENCE?

Under the FW Act, family and domestic violence is defined as “violent, threatening or other abusive behavior by a close relative of an employee that seeks to coerce or control the employee and causes that employee harm or to be fearful”.

A close relative includes members of the employee's immediate family or is related to the employee according to Aboriginal

or Torres Strait Islander kinship rules. Immediate family includes a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee as well as a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

CONFIDENTIALITY

Section 106C of the FW Act requires that employers take steps to ensure any information concerning notice or evidence given by an employee is treated confidentially, as far as it is reasonably practicable to do so. Subsection (2) excludes disclosure required by Australian law or is necessary to protect the life, health or safety of the employee or another person.

FAMILY AND DOMESTIC VIOLENCE LEAVE HELPS VICTIMS OF DOMESTIC VIOLENCE

Although the impact of family and domestic violence continues to plague Australia, these amendments are one step towards easing the burden for many Australian women.

Please email ADAWA for references.

Please contact us if you wish to know more about privacy obligations, or any consumer protection issues, affecting you or your patients.

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