

STOP PRESS!

NEW DOMESTIC VIOLENCE LEAVE SOON TO COME INTO FORCE

FEBRUARY 2019

DOMESTIC VIOLENCE – VICTIMS PROTECTIONS ACT 2018

The **Domestic Violence – Victims Protection Act 2018** was passed into law last year and comes into force on **1 April 2019**. Businesses should be aware it has significant impacts in the employment sphere and there are numerous amendments to the Employment Relations Act and Holidays Act as a result of its passing.

The primary change is that any employee who is a victim of domestic violence is entitled to take up to 10 days of domestic violence leave per year. This type of leave has never existed in New Zealand before and its introduction has drawn attention in the United Kingdom and around the world.

Any employer who receives a request from an employee for domestic violence leave must allow them to take any period that relates to the effects of domestic violence as domestic violence leave, rather than from the employee's annual leave entitlement. However, if the employee has exhausted their domestic violence leave or sick leave then the employer can allow them to take those days from their annual leave entitlement. Domestic violence leave is paid at the same rate as the employee's normal sick leave.

Employees can also request flexible working arrangements on a short-term basis (up to two months) if they are or have been affected by domestic violence. This could include working from home for part of the requested period.

The current regime relating to applications for flexible working in Part 6A of the Employment Relations Act 2000 will extend to flexible working requests arising from domestic violence scenarios.

An employee is deemed to be "affected" by domestic violence if they are:

1. a person **against** whom any other person is inflicting or has inflicted domestic violence; and/or
2. a person with whom there ordinarily or **periodically** resides a child against whom any other person is inflicting or has inflicted domestic violence.

So the employee themselves may not need to be the one affected by domestic violence, it may relate to a child under their care. To qualify for domestic violence leave, the employee needs to have had 6 months' continuous employment with the employer, i.e. the same qualifier as applies to sick leave. It does not matter if the domestic

violence itself occurred before the employee commenced work with the employer.

Employees intending to take domestic violence leave need to follow the ordinary notification requirements that apply to sick leave, that is to let their employer know as soon as possible before they are due to start work on the day in question. An employer can require proof that an employer is a person affected by domestic violence. Quite how this might be proven has not really been discussed in the parliamentary guidance to date.

The amount of available domestic violence leave is up to 10 days leave in each of the 12 month periods following the initial six month qualification period. Any unused leave cannot be carried forward to a subsequent period.

To be clear, this entitlement will exist **in addition to** employees' existing sick leave and other entitlements, the days cannot be taken out of any existing entitlements. Employers may wish to update their employment agreement documentation to include a clause covering the leave entitlement from 1 April 2019. It is also worthwhile noting that the definition of a personal grievance in the Employment Relations Act will be amended to include adversely treating an employee affected by domestic violence, which could include unreasonably refusing a domestic violence leave request.

Please contact us if you would like to discuss impact of these changes on your business.

Jackson Russell