

IN THE FAIR WORK COMMISSION

4 Yearly Review of Modern Awards (Review)

Matter Nos.: AM2015/1 and AM2015/2

Family and Domestic Violence and Family Friendly Work Arrangements clauses

Australian Council of Trade Unions (ACTU)

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4 Yearly Review of Modern Awards (Review)

Matter No.: AM2015/1

Family and Domestic Violence Draft Clause

Australian Council of Trade Unions (ACTU)

1. The ACTU seeks variations to all 122 awards by insertion of the attached draft family and domestic violence clause, subject to the United Firefighter's Union intention to advance tailored provisions of this claim in relation to awards that cover operational fire fighters including the *Firefighting Industry Award 2010*. This clause can be found at Attachment A.
2. The ACTU seeks variations to all 122 awards by insertion of the attached draft family friendly work arrangements clause, subject to the United Firefighter's Union intention to advance tailored provisions of this claim in relation to awards that cover operational fire fighters including the *Firefighting Industry Award 2010*. This clause can be found at Attachment B.

ATTACHMENT A

DRAFT CLAUSE: SUPPORT FOR EMPLOYEES EXPERIENCING FAMILY AND DOMESTIC VIOLENCE

X.1 Definition

For the purpose of this clause, family and domestic violence is defined as any violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or household or causes the family or household member to be fearful. It includes current or former partners in an intimate relationship, whenever and wherever the violence occurs. It may include physical, sexual, emotional, psychological or financial abuse.

X.2 Confidentiality

The employer must take all reasonable measures to ensure personal information concerning an employee's experience of family and domestic violence is kept confidential.

X.3 Family and Domestic Violence Workplace Contacts and advice referral

- X.3.1 The employer will appoint a family and domestic violence workplace contact person to provide a point of first contact for employees experiencing family and domestic violence. The name and contact details of the nominated contact person shall be disseminated to all employees.
- X.3.2 The employer must ensure the contact person is trained in family and domestic violence issues and be able to provide employees with access to the relevant Employee Assistance Program and / or appropriate local specialist resources, support and referral services.

X.4 Workplace Safety

If it is determined that the disclosing employee, other employees or visitors of the employer may be at risk of physical harm, the employer must take reasonable measures to ensure their safety.

X.5 Leave

- X.5.1 An employee experiencing family and domestic violence will have access to 10 days per year of paid family and domestic violence leave to attend legal proceedings, counselling, appointments with a medical or legal practitioner, relocation, the making of safety arrangements and other activities associated with the experience of family and domestic violence.
- X.5.2 Upon exhaustion of the leave entitlements in clauses X.5.1, employees shall be entitled to up to 2 days unpaid family and domestic violence leave on each occasion where paid leave would be available.
- X.5.3 If required, employees may take additional paid or unpaid family and domestic violence leave by agreement with the employer.
- X.5.4 Family and domestic violence leave is in addition to any other existing leave entitlements, and may be taken as consecutive or single days or as a fraction of a day.
- X.5.5 Nothing in this clause shall prohibit the employee from accessing other available forms of leave for the purposes of attending legal proceedings, counselling, appointments with a

medical or legal practitioner, relocation, the making of safety arrangements and other activities associated with the experience of family and domestic violence.

- X.5.6 The employee shall give his or her employer notice of the taking of the leave under this clause, and if required by the employer, evidence that would satisfy a reasonable person that the leave was for the purposes of attending medical appointments, legal proceedings, legal assistance, court appearances, counselling, relocation, the making of safety arrangements and other activities associated with the experience of family and domestic violence.
- X.5.7 Proof of family and domestic violence may be required and may include a document issued by the police service, a court, a doctor (including a medical certificate), district nurse, maternal and child health care nurse, a family violence support service or lawyer or a statutory declaration.
- X.5.8 An employee is entitled to use the NES entitlement to personal / carer's leave for the purpose of providing care or support to a person who is experiencing family and domestic violence, including but not limited to, accompanying them to legal proceedings, counselling, appointments with a medical or legal practitioner or to assist them with relocation, the making of safety arrangements, minding children and other activities associated with the experience of family and domestic violence.

X.6 Individual Support

[This clause supplements the entitlement to request flexible work arrangements pursuant to s.65 of the FWA.] In order to provide support to an employee experiencing family and domestic violence and to provide a safe work environment to all employees, the employer will approve any reasonable request from an employee experiencing family and domestic violence for:

- (i) changes to their span of hours or pattern of hours and/or shift patterns;
- (ii) job redesign or changes to duties;
- (iii) changes to the location of work;
- (iii) a change to their telephone number or email address to avoid harassing contact;
- (iv) any other appropriate measure including those available under s.65 of the FWA.

ATTACHMENT B

DRAFT CLAUSE: RETURN TO WORK PART TIME FROM PARENTAL LEAVE

X.1 Returning to work part time from parental leave

X.1.1 An employee who is returning to work after taking parental leave and who has responsibility for the care of a child is entitled, subject to this clause, to return to the position they held prior to taking parental leave:

- (a) part time; or
- (b) on reduced hours.

This is the employee's "Right to Return".

X.1.2 An employer must give effect to the employee's Right to Return, subject to the following:

- (a) Where there are substantial countervailing business grounds or where the position no longer exists, the employer must offer to accommodate the employee's return to work on reduced hours in an equivalent position commensurate in status and pay to that of the employee's substantive position and for which the employee is qualified and capable of performing.
- (b) The employer may decline to make an offer to accommodate the employee's return to work on reduced hours in an equivalent position under paragraph (a) above only on substantial countervailing business grounds.

X.1.3. The employee seeking to exercise the Right to Return shall provide written application to the employer no less than 28 days prior to the employee's due date of return to work from parental leave.

X.1.4 The employer must discuss the employee's application with the employee, and where they choose, their representative, within [14 days] of receiving the application.

X.1.5 The employer must take into account all relevant circumstances in considering the employee's application, including-

- (a) the employee's circumstances; and
- (b) the nature of the employee's role; and
- (c) the nature of the arrangements required to accommodate the circumstances or responsibilities;
- (d) the consequences for the employee of not making such accommodation; and
- (e) alternative arrangements that might address the employee's circumstances.

X.1.6 A written agreement must be provided by the employer to the employee within 7 days which records an arrangement reached under this clause and which includes, at a minimum, the following matters:

- (a) the location, hours, days and commencing and finishing times to be worked by the employee;
- (b) the classification, job description and remuneration of the work to be performed;
- (b) the period of changed work arrangements;
- (c) that the terms of the agreement may be varied by written consent; and
- (d) that all part time working arrangements are subject to the provisions of the Award.

X.1.7 Where the employee's application is refused or where the employer declines to make an offer in accordance with sub clause 1.2, the employer must provide its reasons (including evidence of its consideration of the alternative arrangements that might address the

requirements of the employee) to the employee in writing within 7 days of discussing the employee's application under X.1.4.

X.2: Right to revert to position and / or work arrangements held prior to taking parental leave

- X.2.1 An employee who has changed their work arrangements in accordance with clause X.1, has the right to revert to the position and / or working arrangements they held prior to taking parental leave, up to 2 years from the date of birth or placement of the child.
- X.2.2 An employee who intends to revert to the position and / or working arrangements they held prior to taking parental leave upon the 2 year anniversary of the date of birth or placement of the child, shall provide no less than 28 days' notice to the employer of their intention. The employer must accommodate the employee's transition to the position and / or working arrangements they held prior to taking parental leave within 28 days of receiving the employee's notice.
- X.2.3 An employee may revert to the position and / or working arrangements they held prior to taking parental leave at any time before or after 2 years from the date of birth or placement of the child by agreement with the employer.
- X.2.4 The terms of the agreement, or any variation to it, must be in writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

X.3: Safe work arrangements during pregnancy

- X.3.1 An employee who is pregnant may change their work arrangements (including hours, patterns, types and location of work) for the duration of their pregnancy to ensure their safety and that of their baby.
- X.3.2 An employee who changes their work arrangements in accordance with this clause, is entitled to return to the position and/or work arrangements they held prior to changing their work conditions at any time by agreement with their employer.

X.4: Paid leave for the purpose of attending appointments associated with pre-natal, pre-adoption or permanent care orders

- X.4.1 An employee shall be entitled to 2 days paid leave for the purpose of attending appointments associated with pregnancy, adoption or permanent care orders. Any leave accessed under this clause will be deducted from the employee's entitlement based on the actual time taken to attend each appointment.
- X.4.2 The employee shall give his or her employer notice of the taking of the leave under this clause, and if required by the employer, evidence that would satisfy a reasonable person that the leave was for the purposes of attending an appointment associated with pre-natal, pre-adoption or permanent care orders.
- X.4.3 Once paid leave has been exhausted, an employee can access accrued personal leave for the purpose of attending appointments associated with pregnancy, adoption or permanent care orders.
- X.4.4 An employee is entitled to use the NES entitlement to personal / carer's leave for the purpose of providing care or support or to accompany a person taking leave to attend an appointment associated with pre-natal, pre-adoption or permanent care orders.