

Dear FWC

I have read the attached, and my reaction was that the sections X.7 and X.8 (that employers may refuse requests on 'reasonable business grounds' and setting out some situations which are included in reasonable business grounds) are too easy for employers to refuse using this as an excuse.

I think the threshold of reasonable business grounds is too low – very easy to point to as an excuse to say no. Basically this low threshold makes this whole right to request token as it is easy for employers to point to a reason in X.8, when really in this day and age none of the X.8 'reasonable business grounds' cannot be quite easily overcome if the employer wants to.

X.8 Without limiting what are reasonable business grounds for the purposes of clause X.7, reasonable business grounds include the following:

(a) that the new working arrangements requested by the employee would be too costly for the employer; [how can a reduction in working time e.g. decreasing time to part-time be more costly – it will almost always be cheaper for the employer]

(b) that there is no capacity to change the working arrangements of other employees to accommodate the

new working arrangements requested by the employee; [larger businesses and companies should have the capacity to hire other part-time employees to fill the gap, and this could often be paid for by the reduction in money paid to the employee who wants to go part-time]

(c) that it would be impractical to change the working arrangements of other employees, or recruit new

employees, to accommodate the new working arrangements requested by the employee;

[same reason as above – this reason is invalid as larger businesses and companies should have the capacity to hire other part-time employees to fill the gap, paid for by the reduction in wages to the employee who is voluntarily reducing their hours]

(d) that the new working arrangements requested by the employee would be likely to result in a significant

loss in efficiency or productivity; [same reason as above – any loss in efficiency or productivity could be overcome with another part-time employee to fill the gap, or arrangements with the employee who wants to become flexible to ensure efficiency and productivity maintained]

(e) that the new working arrangements requested by the employee would be likely to have a significant

negative impact on customer service. [no reason why customers cannot positively deal with 2 part-timers rather than 1 fulltime employee if expectations and performance standards re handover, responsibilities etc are made clear]

So I suggest a higher threshold before employers can refuse.

Or a higher threshold for larger business and companies, and keep this lower threshold just for small business employers who are tight on resources and money.

Regards,

G. Schuster
In-House Lawyer

We've done the analysis so you don't need to

WELCOME,
Kate

LOGOUT

CONTACT US

LEGISLATION AWARDS TERMINATION INDUSTRIAL RELATIONS PAYROLL HR MANAGEMENT RECRUITMENT OHS RESOURCES

SEARCH

Advanced search

Saved searches

Home > Awards > Awards > News > Family friendly arrangements: have your say

Family friendly arrangements: have your say

1

By [Jim Wilson](#) on 7 May 2018

The Fair Work Commission, is calling for industry input into its proposed model clause on family friendly working arrangements.

In March this year, a full bench [provisionally decided](#) that modern awards should be varied to accommodate flexible working for people with caring responsibilities.

Interested parties can comment on the contents of the provisional model term and whether the term is permitted under the Fair Work Act (sections 136, 55 and 56 of the Fair Work Act contain restrictions on the content of modern awards).

Comments can be sent to amod@fwc.gov.au by 4pm Friday 1 June 2018. Any comments in reply are to be filed by 4pm Friday 15 June 2018.

A further mention/conference will be held on Thursday 21 June in Sydney at 10am. Requests for video conference are to be directed to chambers.ross.j@fwc.gov.au.

Further reading

[Statement on Family Friendly Work Arrangements - 3 May 2018](#)

[Summary of decision - Summary of Decision 4 yearly review of modern awards — Family Friendly Working Arrangements – 26 March](#)

[Full decision - Family Friendly Working Arrangements \(AM2015/2\)](#)

Provisional Model Term - X Requests for flexible working arrangements

NOTE: Clause X provides for certain employees to request a change in working arrangements because of their circumstances as parents or carers. Clause X is additional to the provision to request a change in working arrangements in section 65 of the Act.

Employee may request change in working arrangements

X.1 An employee may request the employer for a change in working arrangements relating to the employee's circumstances as a parent or carer if:

- (a) any of the circumstances referred to in clause X.2 apply to the employee; and
- (b) the employee would like to change their working arrangements because of those circumstances; and
- (c) the employee has completed the minimum employment period referred to in clause X.3.

NOTE: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

X.2 For the purposes of clause X.1 the circumstances are:

- (a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger; or
- (b) the employee is a carer (within the meaning of the Carer Recognition Act 2010).

X.3 For the purposes of clause X.1 the minimum employment period is:



RECENT ARTICLES

News

Cases

Analysis

Q&A

In the news: EU privacy, LGBT+ support, bullying 8/05/2018

In the news: worker power, EI and belonging 7/05/2018

FWC seeks input on domestic violence leave clause 7/05/2018

Family friendly arrangements: have your say 7/05/2018

ASK AN EXPERT

Employment topics A-Z
Your workplace encyclopedia

Updated continuously by workplace expert **Paul Munro**



View
our webinar
archive

(a) for an employee other than a casual employee – the employee has completed at least 6 months of continuous service with the employer immediately before making the request; or

(b) for a casual employee – the employee:

(i) has been employed by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months immediately before making the request; and

(ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

X.4 To avoid doubt, and without limiting clause X.1, an employee may request to work part-time to assist the employee to care for a child if the employee:

(a) is a parent, or has responsibility for the care, of the child; and

(b) is returning to work after taking leave in relation to the birth or adoption of the child.

Formal requirements for the request

X.5 The request must:

(a) be in writing; and

(b) state that the request is made under this award; and

(c) set out details of the change sought and of the reasons for the change.

Responding to the request

X.6 The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.

X.7 The employer may refuse the request only on reasonable business grounds.

X.8 Without limiting what are reasonable business grounds for the purposes of clause X.7, reasonable business grounds include the following:

(a) that the new working arrangements requested by the employee would be too costly for the employer;

(b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;

(c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;

(d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;

(e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

X.9 Before refusing a request, the employer must seek to confer with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

(a) the nature of the employee's responsibilities as a parent or carer; and

(b) the consequences for the employee if changes in working arrangements are not made; and

(c) any reasonable business grounds for refusing the request.

What the written response must include if the employer refuses the request

X.10 Clause X.10 applies if the employer refuses the request.

(a) The written response under clause X.6 must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.

(b) If the employer and employee agreed on a change in working arrangements under clause X.9, the written response under clause X.6 must set out the agreed change in working arrangements.

(c) If the employer and employee could not agree on a change in working arrangements under clause X.9, the written response under clause X.6 must:

(i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's responsibilities as a parent or carer; and

(ii) if the employer can offer the employee such changes in working arrangements, set out those changes to working arrangements.

Dispute resolution

X.11 The Commission cannot deal with a dispute to the extent that it is about whether the employer had reasonable business grounds to refuse a request under clause X, unless the employer and employee have agreed in writing to the Commission dealing with the matter.

NOTE: Disputes about whether the employer has conferred with the employee and responded to the request in the way required by clause X, can be dealt with under clause Y—Consultation and Dispute Resolution.

COMMENTS

[Add your comment](#)

No comments yet. Be the first.

Add Your Comment

Logged in as Kate Strack

ADD

YOU MIGHT BE INTERESTED IN...

FWC seeks input on domestic violence leave clause

By [Jim Wilson](#) on 7 May 2018

The Fair Work Commission is seeking input on a new model clause on unpaid domestic violence leave for insertion into nearly all modern awards. [Read more](#)

Awards: parents/carers win flexible working clause

By [Australian Business Lawyers & Advisors](#) on 27 March 2018

The FWC has rejected union calls for parents and carers to have the right to set their own hours, but plans to insert a new clause into modern awards aimed at facilitating flexible work requests. [Read more](#)

Webinar | What's happening with modern awards?

5 March 2018

Want to know about the Fair Work Commission's latest decisions concerning modern awards? Then join our webinar on March 15. [Read more](#)

[Marketing](#) [WHS](#) [HR](#) [Business Growth](#) [International Trade](#) [Legal](#)

[About Us](#) [Contact Us](#) [Conditions of Use](#) [Privacy](#) [FAQs](#) [Terms and Conditions](#) [Use of Cookies](#)

Copyright © 2018 NSW Business Chamber (ABN 63 000 014 504). All rights reserved. No materials on this site or any part of this site may be reproduced or copied in any form without the prior written permission of the publisher. Please refer to our conditions of use, privacy policy and disclaimer.