

update

1 September 2008

Employment law: Change to Equal Opportunity Act – Flexible work arrangements for workers with family responsibilities

The Equal Opportunity Act 1995 (Vic) was amended to include a provision regarding flexible work arrangements. These changes recently came into effect on 1 September 2008.

While the changes essentially mean that an employer cannot reasonably refuse to accommodate an employee's parent or carer responsibilities, it is not an automatic right of an employee to change their days or hours. The request must be reasonable in the individual circumstances.

Legislative changes in summary

Under State and Federal laws, it is unlawful for employers to discriminate against someone because they are a parent or carer. The amendments to the *Equal Opportunity Act 1995 (Vic)* effectively expand the range of what constitutes discrimination against parents or carers in employment or employment-related areas.

The amendments mean that an employer cannot reasonably refuse a request to accommodate an employee's parent or carer responsibilities.

Requests by employees for accommodating parent or carer responsibilities may include (but are not limited to) a request to:

- work part-time
- job share
- adjust start and finishing times
- work increased hours over less days
- work from home

The changes do not give employees an automatic "right" to insist on part time work, or amended work hours. It is not unlawful to refuse to accommodate flexible work arrangements. However, it is unlawful to refuse to accommodate flexible work arrangements where the flexible work arrangement request is "reasonable in the circumstances".

When determining whether it would be unreasonable to refuse to accommodate the parent or carer responsibilities request through flexible work practices, the specific situation is assessed against the following criteria, (which are set out in the legislation):

- the employee's personal circumstances
- the nature of the role
- the nature of the arrangements required to accommodate the parental or carer responsibilities
- the financial circumstances of the employer
- the size and nature of the workplace and the employer's business
- the effect on the workplace and the employer's business of accommodating those responsibilities, including the financial impact, the number of people who would benefit or be disadvantaged and the impact on efficiency, productivity and customer service
- the consequences for the employer of making such accommodation
- the consequences for the employee of not making such accommodation

The amendments to the *Equal Opportunity Act 1995 (Vic)* apply to employees and contractors of an employer in Victoria who have parent or carer responsibilities.

"Parent" includes step-parent, adoptive parent, foster parent or guardian. "Carer" is defined as meaning "a person on whom another person is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis".

The flexible work arrangements would not apply therefore in circumstances where an employee does not provide the majority of ongoing care to another person.

What does this mean for employers?

These changes in Victoria may affect an employer's internal policies. Employers will need to ensure that any relevant internal (or externally published) policies take into account the above legislative changes.

Employers should consider the following before making any flexible work arrangement request determination:

- Is the employee a parent or carer within the definition of the *Equal Opportunity Act 1995 (Vic)*? (Does the employee have another person who is wholly or substantially dependent on them for ongoing care and attention?)
- What is the nature of the flexible work arrangement requested by the employee to accommodate their parent or carer responsibilities?

- What is the reason for why an employee needs a flexible work arrangement? What are the personal circumstances of the employee?
- What is the nature of the employee's role? What are the fundamental aspects of the employee's position that the employer requires them to fulfil? For example, does their position require the employee to be physically present in the office at all times for the benefit of clients or work colleagues, or could the employee work remotely?
- How easy would it be for the employer to accommodate the employee's flexible work arrangement request? Are there any business requirements that would hamper the implementation of a flexible work arrangement such as the need for the employee to be physically present during office hours? What would it cost directly and indirectly for the employer to implement the flexible work arrangement in terms of direct cost (the cost of setting up remote access at the employee's home) and indirect cost (such as loss in productivity and efficiency)?
- Would the flexible work arrangement adversely affect other employees?
- What would the consequence be for the employee if the employer refused to accommodate the employee's flexible work request?

Based on the above matters being considered by an employer, it will then be in a better position to determine whether it would be unreasonable to refuse to accommodate the employee's flexible work arrangement request.

Legal advice should be obtained prior to any decision made to refuse to accommodate an employee's flexible work arrangement request.

For more information

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