



Job security and gender equality

Right to request flexible working arrangements

These amendments form part of an Australian Government commitment to improve job security and put gender equality at the centre of the workplace relations system.

What has changed?

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* (the Act) to strengthen the right to request flexible working arrangements to assist eligible employees to negotiate workplace flexibilities that suit both them and their employer.

The amendments:

- expand the circumstances in which an employee may request flexible work arrangements to include employees who are pregnant as well as situations where an employee, or a member of their immediate family or household, experiences family and domestic violence.
- legislate the substance of the Fair Work Commission's (the Commission) model flexible working arrangements modern award term to provide a fair and transparent process for responding to flexible working arrangement requests, and
- allow the Commission to deal with a dispute about a request, including by conciliation, mediation or if necessary mandatory arbitration, in circumstances where employers and employees cannot agree on a solution at the workplace level.

What do these changes mean?

The National Employment Standards in the Act provide eligible employees with an entitlement to request a flexible working arrangement. The [Fair Work Ombudsman's website](#) provides more details on eligibility for this existing entitlement. Previously, the Act contained minimal guidance

on how an employer needed to respond to a request for flexible working arrangements and limited the Commission's ability to deal with disputes about the reason for refusing a request.

The amendments mean that when an eligible employee makes a request for a flexible working arrangement, their employer will have an obligation to discuss the request with them. If their employer refuses a request, the employer will need to provide reasons in writing. The employer will also need to consider and inform the employee in writing if there are any other changes in working arrangements they would be willing to make to accommodate the employee's circumstances.

The threshold of "reasonable business grounds" and examples of reasonable business grounds on which an employer can refuse a request have not changed.

Without limiting these grounds, they include the following:

- that the new working arrangements requested by the employee would be too costly for the employer
- that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee
- 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
- that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity, and
- that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

The specific circumstances of the employer, including but not limited to the size and nature of the employer's enterprise, are relevant to whether an employer has reasonable business grounds to refuse a request.

The amendments also provide increased access to dispute resolution for employees through the Commission if they cannot resolve disputes about flexible working arrangements at the workplace level. The Commission will be able to resolve a dispute by conciliation, mediation or mandatory arbitration. Unless there are exceptional circumstances, the Commission must first attempt to resolve the dispute using non-binding methods, such as conciliation or mediation, before it can arbitrate a dispute.

When will these changes come into effect?

These changes will come into effect on 6 June 2023.

For more information on the *Secure Jobs, Better Pay* package visit:

www.dewr.gov.au/workplace-relations.