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FLEXIBLE WORKING ARRANGEMENTS

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 ("the Act") was enacted in November 2007 and came into force on 1 July 2008. The Act provides a statutory right to eligible employees to request a variation of their working arrangements and imposes certain duties on employers when it receives those requests.

WHO IS ELIGIBLE TO MAKE A STATUTORY REQUEST?

An employee may make a request if he or she has the care of any person and has been employed for the last six months. If an employee has made a statutory request and the employer has made a decision, he or she is not entitled to make another statutory request within 12 months of the previous request.

WHAT INFORMATION DOES A REQUEST HAVE TO INCLUDE?

An employee may request the variation of any or all of the following:

- Hours of work
- Days of work
- Place of work

A request must be in writing and state the employee's name, the date and that the request is made under Part 6AA of the Employment Relations Act. The request must specify all of the following:

- The requested variation to the working arrangements
- Examples of requested variations may include:
 - Starting work earlier or later
 - Finishing work earlier or later
 - Working on different days or shifts

- Working compressed hours
- Changing the number of hours and days
- 'Term-time' working
- Working all or some hours from home
- Job sharing
- 'Flexi-time' or 'glide-time'.

The request must explain both of the following:

- How the variation will enable the employee to provide better care for the person
- What changes the employer may need to make if the employee's request is approved.

WHAT ARE THE EMPLOYER'S OBLIGATIONS?

Employers must deal with a request as soon as possible but no later than three months after receiving it, and notify the employee of the outcome. An employer may refuse a request only if:

- The employee is not eligible to make a statutory request; or
- Request cannot be accommodated on one or more statutory grounds for refusal; or

If the request is refused, the employer must notify the employee whether it is refused because the employee is not eligible to make a request, or because the request cannot be accommodated due to one or more statutory grounds for refusal, or both.

GROUND'S FOR REFUSAL

The Act recognises that not all employers will be able to accommodate flexible working arrangements. An employer may refuse a request if it cannot be accommodated on one or more of the following grounds:

- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Detrimental impact of quality
- Detrimental impact on performance
- Insufficient work during the periods the employee proposes to work
- Planned structural changes
- Burden of additional costs
- Detrimental effect on ability to meet customer demands.

If a request is refused because it cannot be accommodated on a ground for refusal, the employer must notify the employee of the ground for refusal and provide an explanation of the reasons for that ground.

COLLECTIVE AGREEMENT

An employer must refuse a request if all of the following apply:

- The request is from an employee who is bound by a collective agreement
- The request relates to working arrangements covered by the collective agreement

- The requested working arrangements would be inconsistent with the collective agreement.

DISPUTES PROCEDURE

Employees may challenge an employer's refusal or failure to respond only if the employee believes the employer had not complied with the statutory procedure. The employee may allege that the employer failed to:

- Correctly determine an employee's eligibility to make a statutory request; or
- Notify the employee of the outcome within 3 months; or
- Notify the employee whether the refusal was due to a ground for refusal or due to eligibility; or
- Provide an explanation of the reason for the ground for refusal.

If an employer does not deal with a request in accordance with the statutory procedure, the employee may refer the matter to a Labour Inspector. If the employee is not satisfied with the result, it may be referred to mediation, and then to the Authority for a determination. An application to the Authority must be made within 12 months after the employer refused a request.

REVIEW

A report will be prepared after July 2010 on the operation and effects of the Act and it will consider whether the Act should extend to all employees.

SUMMARY

In summary:

- Eligible employees have a statutory right to request a variation of their working arrangements if they have the care of any person.
- Employers must deal with a request as soon as possible, but not later than 3 months after receiving it.
- Employers may refuse a request only if it cannot be accommodated on certain grounds.
- If an employer does not deal with a request in accordance with the statutory process, the matter may be referred to a Labour Inspector, then to mediation and then to the Authority.

OUR ADVICE

We recommend the following:

- All employers should keep a written record of all requests and any consultation, consideration and reasons for the decision.
- Training for supervisors and managers
- Identify necessary changes to the employee's terms of employment due to the requested variations
- Ensure any variations are recorded accurately and signed by both parties
- Monitor and review the impact and effects on the workplace periodically.

Before approving any request, employers should consider the effects and implications of the following:

- Health and safety
- The impact of the request on the rest of the employee's terms of employment
- The impact on holiday and leave entitlements and calculation
- The potential impact on the workplace and business operations
- The costs of setting up mechanisms to accommodate the variations and to ensure employees remain productive and accountable in the new flexible working arrangement.

The Employment Team at Govett Quilliam is happy to help you with any question which may arise in your workplace. Please telephone:

- Andrew Laurenson
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Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

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