FLEXIBLE WORK REQUESTS

FRIEND OR FOE?

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Briefing Outline

• NES Rights & Obligations
• Employee Recourse
• Criticisms of the Entitlement
• FWAs the way of the future
• Flexible Working Arrangements in Practice
• Practical Suggestions for Employers
• Question time
The Right to Request

The entitlement

- Employee may request a change in working arrangements
- National Employment Standard
- Any state or territory laws that provide a more beneficial flexible working arrangement system will continue to apply
  - Victoria – Equal Opportunity Act
Parent

• The employee must be:
  – a parent, or
  – a person who has responsibility for the care of a child
    • Guardian
    • Foster parent
    • Custodial relationship
The Child

The child:

- Must be under school age, or
  - The age at which the child is required by a law of a state or territory in which the child lives to start attending school
- Be under 18 and have a disability
  - Disability not defined
  - Disability Discrimination Act?
- Child includes:
  - adopted child
  - step-child
Assist to care for the child

- The requested change in working arrangements must assist the employee to **care** for the child
Service

- 12 months continuous service
- Long-term casual
  - regular and systematic basis for a sequence of periods of employment during a 12 month period; and
  - Reasonable expectation of continuing employment on regular and systematic basis
Form requirements

The **employee’s** request must be:
- ✓ in writing
- ✓ set out the change sought
- ✓ set out the reason/s for the requested change

The **employer** must:
- ✓ grant or refuse the request
- ✓ if refusing, provide **details** of the reason/s for refusal
- ✓ in writing
- ✓ within 21 days.
Refusal

• In order to refuse a request for FWAs, the refusal must be based on **reasonable business grounds**.
• Reasonableness of refusal assessed in the circumstances that apply when the request is made.
Reasonable business grounds

Explanatory memorandum:

• Effect on the workplace and the employer’s business of approving the request
  – e.g. financial, efficiency, productivity, customer service
• Inability to organise work amongst existing staff
• Inability to recruit a replacement employee or impracticability or otherwise of the arrangements that may need to be put in place to accommodate the request
Employee Recourse

CHALLENGING COMPLIANCE WITH THE LAW

- Contravention of the NES - up to $33,000 fine for non-compliance i.e. failure to comply with form requirements

CHALLENGING A REFUSAL

- No right to a review of a decision to refuse
- Dispute Resolution Procedure?
- Anti-Discrimination legislation
- Fair Work Act – General Protections provisions
Implementing FWAs

- **Individual Flexibility Agreement (IFA)**
  - Modern Awards; and
  - Agreements made on or after 1/7/09
    - Genuine Agreement
    - In writing and signed
    - Terms which are varied
    - Details of variation
    - Provisions for termination
    - **Better off overall**

- **Award-free or pre Fair Work Act Agreement**
  - Contract variation or an agreement in writing
Criticisms of the Entitlement

• Trade Union Movement
  – The Act doesn’t go far enough

• Employers
  – Workplace Culture
  – Implementation
  – Impact on productivity
  – Confidentiality
  – Trust issues
  – Working off-site
  – Legal challenge (Anti-D and General protections)
  – Reputation
FWAs - the way of the future

BENEFITS OF A HOLISTIC APPROACH

• Attraction and Retention
  – FWAs as a method to retain w/o necessarily increasing wage costs
  – Employees don’t value wage as highly as Employers might imagine

• Productivity & Efficiency
  – Greater productivity through increased job satisfaction
  – Less distracted, less stressed and therefore more productive and efficient
FWAs - the way of the future

- Reducing absenteeism
- Demands of the Employment Market
  - Baby Boomers – predicted mass exodus
  - Gen Y to the Y Chromosome
- Employer of choice / Competitive Edge
- Dealing with Downturn
FWAs - the way of the future

• Efficient workplaces
  – “Institutional memory”, industry knowledge, networks and contacts

• Cost savings
  – ↓ recruitment and retraining costs
  – Increase Flexibility instead of Salary
  – Wage costs (more efficient use of labour)

• Bigger talent pool
Flexible Working Arrangements in Practice

1. Scheduling of hours
   - Compacted work week (5 in 4)
   - Change in days
   - Flexitime
   - Split shifts
   - Staggered start and finish times
   - Flexible working hours
   - Make-up time
Flexible Working Arrangements in Practice

2. Amount of hours

- Part-time work
- Job-sharing
- Carer’s leave / unpaid leave system
- Part year work
Flexible Working Arrangements in Practice

3. Place of work
   – Working from home or offsite
   – Transfer to another location

4. Other
   – Family rooms
   – Career break leave
   – Wellness days
Practical Suggestions

• Consider changing your approach – this is the way of the future!

YOUNGSTERS THESE DAYS ARE SPOILT, APART FROM THE TRIPLE-BYPASS, FIVE DIVORCES, 4 ESTRANGED CHILDREN AND CIRRHOSIS 80 HOUR WEEKS NEVER DID ME ANY HARM!
Practical Suggestions

• Be clear about Rights and Obligations
• Implement or Review Policies & Procedures
  – Establish criteria
  – Apply policies consistently
  – Template Forms
• Don’t just ‘talk the talk’
Practical Suggestions

• Do your research and be realistic – can we realistically accommodate this request?

• Prepare **now** - consider if/how each position can be measured by output rather than input.

• Don’t be scared to say ‘no’, the request may not be suitable for the position/industry.

Clients who show up early for an appointment are really annoying – especially when you work from home.
Practical Suggestions

• Protect the Organistation
  – Confidentiality
  – Training in dealing with requests
  – Give real consideration and avoid ‘knee jerk’ reactions
  – Record arrangements in writing
Practical Suggestions

• Demonstrate “Reasonableness”
  – Explore alternatives rather than outright refusal
  – Trial requested arrangements
  – Encourage open communication
  – Say ‘yes’ but make it conditional
  – Proper consideration
Practical Suggestions

• Monitor
  – Employee Performance against expectations and targets
  – Impact of decisions and Outcomes e.g. does it really reduce absenteeism?

• Consider benefits of a holistic approach

• “fresh ideas for work and family” – small business grant (up to $15,000)
Questions?