

Employment Law Update.

– What has changed, what will change and how does it affect your business?

As we take our first steps into 2023, it is prudent for employers to take stock of the key developments that took place in the Australian workplace law landscape in 2022. Notably, the introduction of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* and the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022*.

We outline the key provisions below, as well as recommend actions for your business to consider:

Key Changes	When and what is changing	Recommended Actions
Prohibition of secrecy contract terms	From 7 December 2022, employment contracts, written agreements or company policies must not contain provisions requiring employees to keep secret information about their pay, employment terms and other conditions.	Review template employment contracts, written agreements or company policies and remove clauses that require secrecy, or to confirm that such clauses do not exist. NB: Any contract entered into prior to 7 December 2022 with existing secrecy provisions will no longer have an effect (the balance of the contract will remain in force, however).
No policing of secrecy obligations	From 7 December 2022, employers are prohibited from attempting to maintain secrecy around their employees' pay. This means that employees have full autonomy to decide whether or not to disclose information about their employment terms, conditions, and pay. Employers are not permitted to monitor or control the sharing of this information by their employees.	Review internal policies and practices and remove any right you may have to investigate, enquire or police employees for sharing information relating to their employment terms, conditions, and pay.



Flexible work arrangements

From 6 June 2023, the right to request flexible work arrangements will be extended to include employees who experiencing family and domestic violence (FDV), and pregnant employees. The right will also extend to those employees if a member of their immediate family or household is experiencing FDV.

New employer obligations include:

- (i). Discussing the request with the employee;
- (ii). Consider the effect if the request is refused;
- (iii). The employer making a genuine efforts to offer alternate arrangements to accommodate the employee.

Employers must respond to a flexible working arrangement request within 21 days of the request being made.

Strict and defined conditions are noted in the event the employer is considering refusing the request.

Establish a clear internal policy and procedure for flexible work arrangements, taking into consideration the updated obligations as an employer.

If you already have an internal policy on flexible working arrangements based on the current legislative framework, please consider whether this policy requires updating.

Prohibition of fixed term contracts

From 6 December 2023, employers will no longer be able to employ employees on a fixed-term contract for a term of two or more years (including extensions), or a fixed term contract which can be extended more than once.

Employers must not re-engage an employee on a new contract that is substantially similar to the role, nature and employment relationship of a previous contract entered into by the parties.

Employers should carefully review their current employment contracts to ensure compliance with these new standards and incorporate the Fixed Term Contract Information Statement.

Consideration should be given to the nature of the role and whether fixed-term contracts are the appropriate mechanism or whether alternative arrangements should be considered.

Positive duty to eliminate sexual harassment

A positive duty is now imposed on employers to take reasonable and proportionate measures to eliminate workplace sexual harassment, victimisation and sex discrimination.

Employers should implement robust measures to prevent instances of unlawful sex discrimination or sexual harassment, such as collecting and monitoring data, providing appropriate support to employees, and providing regular training and education on the subject.

NB: Simply updating policies and procedures will not be sufficient.



Threshold established for 'harassment on the ground of sex'

From 13 December 2022, the 'seriously demeaning' threshold was amended to align with existing legal standards and other offences under the *Sex Discrimination Act 1984 (Cth)*.

Employers should review their existing internal sexual harassment policies and consider updating scope and definitions to align with the update.

If you do not have in place an internal sexual harassment policy (or a broader anti-discrimination policy), we would recommend having regard to preparing and implementing such a policy to ensure better oversight over compliance.

Paid family and domestic violence leave

From 1 February 2023, all employees, including casuals, will be entitled to 10 days of paid family and domestic violence leave.

Employers should update any relevant policies or procedures, effective from 1 February 2023.

Employers should be mindful that the scheme appears that it will operate similarly to the sick leave entitlements in that the employee may be able to claim domestic violence leave retrospectively, provided the employer is comfortable with the evidence supplied and other conditions required to be met.

NB: for confidentiality and sensitivity reasons, the accrual of this leave must not be shown on the employees' pay slips.

Employers have the opportunity to make positive changes to ensure compliance with updated employment laws. While some of these changes may not be mandatory yet, it's important to proactively consider them.

At Hitch Advisory, we're here to help employers stay ahead of the curve. We offer comprehensive support, from reviewing current employment agreements and policies to preparing future contracts and internal documents that incorporate the new changes. By partnering with us, employers can feel confident that they're creating a fair and compliant workplace that prioritises the needs of their employees.

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