

01



Australian Government

Fair Work
OMBUDSMAN

Best Practice Guide Work & family



- 01 Work & family
- 02 Consultation & cooperation in the workplace
- 03 Use of individual flexibility arrangements
- 04 A guide for young workers
- 05 An employer's guide to employing young workers
- 06 Gender pay equity
- 07 Small business & the Fair Work Act
- 08 Workplace privacy
- 09 Managing underperformance
- 10 Effective dispute resolution
- 11 Improving workplace productivity in bargaining
- 12 Parental leave

Working at best practice

Best practice employers foster flexibility to achieve a better balance between work and family responsibilities for all employees. From reduced absenteeism to improved productivity and job satisfaction, there are significant benefits for employees and employers in providing flexibilities for work and family balance.

Work and family flexibilities ensure employers and employees balance work and family commitments by using employment arrangements that help employees manage family and lifestyle commitments while taking into account business needs.

The benefits of work and family flexibilities can be achieved in all workplaces, regardless of the size of the business, by developing and implementing family-friendly workplace policies.

This Best Practice Guide explains:

- the advantages of working at best practice
- the benefits of developing family-friendly workplace strategies
- employees' rights to family-friendly entitlements
- developing flexible workplace strategies
- communicating family-friendly initiatives
- the importance of reviewing and assessing family-friendly policies and procedures
- workplace discrimination.

There is also a checklist on how to achieve a family-friendly workplace.

This guide illustrates best practice when it comes to achieving family-friendly workplaces. For specific information regarding your minimum legal obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

Why work at best practice?

Reducing the stress from conflicting demands between family, work and other responsibilities in life is of benefit to employees, employers and the wider community. Employers who work to achieve best practice with work and family balance will reap many benefits, including:

- a cost-effective means of retaining skilled staff and attracting new employees

- a way to be recognised as an employer of choice within an industry or sector

- an increase in the number of people returning to work after parental leave

- improvement in staff morale, leading to greater engagement in the workplace

- reduction in turnover of staff, leading to lower recruitment and training costs

- demonstrating to staff that they are valued by the organisation

- reduced absenteeism

- maintained and improved productivity by ensuring highly skilled employees are recruited and retained

- improved organisational efficiency through the benefits of long service, e.g. institutional memory, industry knowledge, networks and contacts.

What is work life balance?

One of the best ways of ensuring balance between work and family is by the use of family-friendly workplace policies and practices.

- Family-friendly workplace provisions negotiated between an employer and its employees may include:

- accessing annual leave in single or part-day periods

- taking time off in lieu of overtime payments

- working additional hours to make-up for time taken off

- accessing accrued rostered days off in part-days or more flexibly

- enabling children to access the workplace (where safe) or providing a carer's room, child care facilities or information about where parents can access these facilities near their workplace

- working part-time or creating part-time work opportunities

- job share arrangements

- telecommuting or home-based work.

What are an employee's entitlements to family-friendly arrangements?

The Fair Work Act 2009 (FW Act) contains entitlements which an employer must provide to employees to assist employers and employees achieve better work and family balance. Access to entitlements under the FW Act will vary depending on whether the employee is a casual, full-time or part-time employee.

The National Employment Standards (NES) set out a safety net of minimum entitlements for most national system employees. The NES includes:

- a 38 hour working week for full-time employees, plus reasonable additional hours

- four weeks annual leave per year (pro-rata for part-time employees)

- 10 days paid sick and carer's leave each year (pro rata for part-time employees), 2 days paid compassionate leave for each permissible occasion, 2 days unpaid carer's leave for each permissible occasion, and 5 days unpaid family and domestic violence leave (in a 12 month period)

- 12 months unpaid parental leave after 12 months continuous service with a right to request to extend the initial period of unpaid parental leave by a

further 12 months (which can only be refused on reasonable business grounds)

- community service leave (for an eligible community service activity)
- public holidays
- the right to make a written request for flexible working arrangements by employees because they:
 - are the parent, or have responsibility for the care of a child who is of school age or younger
 - are a carer (within the meaning of the *Carer Recognition Act 2010*)
 - have a disability
 - are 55 or older
 - are experiencing violence from a member of their family or
 - provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.

A request for flexible working arrangements can only

be refused on reasonable business grounds.

Some of these entitlements are not available to casual employees. For more information about these entitlements, visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

In addition to the FW Act, other legislation – such as state/territory and federal anti-discrimination laws – operates to ensure that employees are not discriminated against where they have certain family or carer responsibilities. Some of this legislation also includes a right to request flexible working arrangements. Best practice employers should familiarise themselves with the relevant state or territory legislation which regulates their business. See also Best Practice Guide No 1a ‘The right to request flexible working arrangements’.

Employers can build on the minimum entitlements by implementing family-friendly workplace strategies.



Reasonable business grounds or refusing a request from an employee may include, but are not limited to:

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

What should employers do with a request?

What should employers do with a request?

Employers covered by an award must first discuss the request with their employee to try to reach an agreement about changes to the employee's working conditions, taking into consideration:

- the needs of the employee

- consequences to the employee if changes in working arrangements aren't made

- any reasonable business grounds for refusing the employee's request.

All employers who receive a request must provide a written response within 21 days which outlines whether the request is approved or refused.

Employers can only refuse a request. A request for flexible working arrangements can only be refused on reasonable business grounds. If a request is refused the written response must include the reasons for the refusal.

If an award applies, before responding in writing, you must have a discussion with the employee to try to reach an agreement about the changes an employee has requested to their work conditions. If an award applies and there's no agreement on a change in working arrangements the written response must state whether or not there are any changes in working arrangements that the employer can offer the employee. If the employer can offer changes, they must set out those changes in the written response.

What are reasonable business grounds?

Example: Reasonable business grounds for refusing a request from an employee may include, but are not limited to:

- the new working arrangements requested by the employee would be too costly for the employer

- there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee

→ 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

→ the new working arrangements requested by the employee would be likely to result in significant loss of efficiency or productivity

→ the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

Some of these entitlements are not available to casual employees. For more information about these entitlements, visit the Flexible working arrangements page or contact the Fair Work Infoline on 13 13 94.

In addition to the FW Act, other legislation – such as state/territory and federal anti-discrimination laws – operates to ensure that employees are not discriminated against where they have certain family or carer responsibilities. Some of this legislation also includes a right to request flexible working arrangements. Best practice employers should familiarise themselves with the relevant state or territory legislation which regulates their business. See also best practice guide No 1a 'The right to request flexible working arrangements'.

Employers can build on the minimum entitlements by implementing family-friendly workplace strategies

Developing flexible workplace strategies

A successful family-friendly workplace strategy should be developed having regard to the flexible work requirements of employees as well as business needs.

There are a wide variety of initiatives that an organisation can introduce as part of a flexible family-friendly workplace strategy. These include:

- ensuring employees and potential employees are informed of available family-friendly working arrangements at recruitment and induction

- organising staff meetings when most people can attend



Benefits of work and family best practice

Murray works at NPW Pty Ltd, which has been expanding for the last few years. When the business started, no one at NPW had children. However, Murray and three other co-workers are all expecting children over the next few months. Murray is concerned because he is not sure how his new family responsibilities will be viewed and accommodated at work. After all, the issue has simply never come up before. Murray approaches the manager Aneeqa, who acknowledges that this is an issue that needs to be carefully considered.

Aneeqa organises a staff meeting during work hours to consult with employees on how to best accommodate each employee's family responsibilities while still meeting business objectives. Aneeqa also invites the employees to ask a representative to attend the meeting if they wish. The employees have a range of ideas that they raise in the meeting. Aneeqa also asks Murray to write a short email survey for employees to fill out. The survey results are considered at a follow-up staff meeting at work two weeks later. While a number of ideas are discussed, the employees and Aneeqa decide that they would like to be able to work from home at times, have flexible starting and finishing times and a carer's room at work.

Aneeqa discusses the proposals with the general manager and financial officer, who are supportive of the ideas but advise they need to ensure that the ideas are feasible from a business perspective. After further consideration of financial and work health and safety (WHS) issues, the management team decide that clear protocols about the use of the carer's room at work need to be established and that a policy on flexible working arrangements needs to be developed.

Aneeqa works with Murray to put NPW's commitment to family-friendly working conditions in writing and they create the NPW Work and Family Policy which outlines the procedures for working from home, requesting flexible start and finish times and sets out the facilities that will be provided in the carer's room together with protocols for use. Staff are advised that the policy has been finalised and it is then included in NPW's employment manual, which is accessible to all employees. Management suggest that a follow-up meeting should be held in three months time to assess how well the policy has been working.

- providing unpaid leave during school holiday periods to accommodate carer's responsibilities

- creating meaningful part-time employment opportunities

- providing periods of paid parental leave

- consenting to an employee working flexible hours to accommodate their personal circumstances such as dropping off or picking up children from school or day care, or assisting elderly family members

- making sure that employees on parental leave are kept up to date about what is going on in the workplace including any changes that might occur

- organising professional development or training during ordinary work hours

Remember, you can also develop your own flexible working arrangements to suit the needs of your workplace. A good place to start is to ask the employees what would make a difference to them.

The extent to which a business adopts flexibility initiatives may be guided by the organisation's resources (including cost and level of administrative support), the size of the business and the demographic of the workforce.

While some initiatives may require initial or up-front expenditure, they may be cost-efficient in the long term when taking into account staff retention rates, increased productivity, business reputation and status as an employer of choice. If in doubt, trialling a new flexible work arrangement may be a useful way of determining whether it suits both employees and the organisation.

When developing flexible workplace strategies, you should keep in mind that work responsibilities can impact on different people's lives in different ways. For example, women with caring responsibilities are a group of employees that are often disproportionately disadvantaged when balancing work and family responsibilities. It is important, therefore, to consult with employees about their needs and to understand the types of family-friendly provisions which would benefit both employees and the business. This will help to ensure that the flexible strategies introduced are tailored to your particular workplace.

Communicating family-friendly provisions

Documenting family-friendly provisions enables employers and employees to have a clear understanding of the provisions that are available within a business and how they can be accessed.

Recording flexible workplace arrangements or family-friendly provisions created after an employer and employee consultation process will mean that both parties are aware of their responsibilities and entitlements. This will help prevent confusion in the future.

The most common way to record family-friendly provisions is by including them in an enterprise agreement, contract of employment or in a policy and procedures manual. This will ensure that employees are aware of what is available, why some flexibilities can be accessed and why others can not, as well as the process for making requests. Documenting family-friendly provisions will also help an employer to develop a process for considering requests and to ensure that fairness and equity is provided across the workplace. Employers may choose to seek advice before implementing an agreement, contract or policy.

Where family-friendly provisions are included in an enterprise agreement or an applicable award, they will apply to those employees covered by the agreement or award.

Family-friendly clauses in agreements and awards usually contain information on the:

- nature of the provision (e.g. flexible hours of work)

- entitlements under the provision (e.g. a right to apply for flexible hours of work)

- eligibility criteria (e.g. primary care of a child or children under school age or a child under 18 with a disability).

- awards contain specific information on what needs to be included in the employer's written response if the request is refused

There will also generally be a review process that an employee can access if they have concerns about whether they are receiving the entitlement. In some cases, employees and employers can also agree to have the Fair Work Commission resolve disputes in relation to flexible work arrangements.

Family-friendly policy or procedure documents may supplement the provisions in the applicable agreement or award and provide further information about how the provision is applied.

To give flexible working arrangements the best opportunity to succeed, it is also important to ensure managers are given adequate training on how to manage flexibility in the workplace.

Review and assessment

Over time, both staff and business needs change so family-friendly provisions should be regularly reviewed. This will ensure family-friendly provisions are consistent with applicable legislation and do not become outdated or irrelevant to the business.

Discrimination

Various state/territory and federal anti-discrimination laws prohibit discrimination on the basis of marital status, sex, pregnancy, and family or carer's responsibilities.

The FW Act also makes it unlawful for an employer to discriminate against an employee based on their marital status, sex, pregnancy, and family or carer's responsibilities.

Employees who believe they have been discriminated against should contact:

- their employer or human resources manager

- an equal opportunity officer or grievance officer

- a union (if they are a member)

- the Fair Work Commission

- the Fair Work Ombudsman, or

- the Australian Human Rights Commission or the relevant state or territory anti-discrimination body.

Checklist for a family-friendly workplace

- ✓ Is the concept of work and family balance and its benefits positively received and understood by managers and employees?

- ✓ Is it acknowledged that employees have important roles and responsibilities outside the workplace?

- ✓ Are there consultative processes in place that enable staff to talk collectively and individually about business and employee needs for work and family balance?

- ✓ Are employees aware of what family-friendly entitlements exist in the workplace and how to utilise the provisions?

- ✓ Are the family-friendly provisions documented in writing and easily accessible to all employees?

- ✓ Are employees who use family-friendly provisions, such as flexible working hours or parental leave, treated the same as other employees when assessing opportunities within the organisation, including promotion and training opportunities?

- ✓ Is there an internal process to implement the right to request flexible working arrangements for employees?

- ✓ Have you considered using an individual flexibility arrangement to accommodate an individual employee's specific needs? See also best practice guides No 1a 'The right to request flexible working arrangements', 'The right to request flexible working arrangements' and No 3 'Use of individual flexibility arrangements'.

- ✓ Are regular reviews conducted of existing family-friendly provisions?

For more information

Fair Work Ombudsman

13 13 94

www.fairwork.gov.au

Fair Work Commission

www.fwc.gov.au

Australian Human Rights Commission

(02) 9284 9600

www.humanrights.gov.au

www.supportingworkingparents.gov.au

State and territory anti-discrimination bodies

Australian Capital Territory Human Rights Commission

(02) 6205 2222

www.hrc.act.gov.au

New South Wales Anti-Discrimination Board

(02) 9268 5544

www.lawlink.nsw.gov.au/adb

Northern Territory Anti-Discrimination Commission

1800 813 846

(08) 8999 1444

www.adc.nt.gov.au

Anti-Discrimination Commission Queensland

1300 130 670

www.adcq.qld.gov.au

South Australian Equal Opportunity

08) 8207 1977

www.eoc.sa.gov.au

Tasmanian Office of the Anti-Discrimination Commissioner

03) 6233 4841

www.antidiscrimination.tas.gov.au

Victorian Equal Opportunity and Human Rights Commission

1300 891 848

www.humanrightscommission.vic.gov.au

Western Australian Equal Opportunity Commission

(08) 9216 3900

www.eoc.wa.gov.au

Acronyms used in this guide

FW Act *Fair Work Act 2009*

NES National Employment Standards

WHS Work health and safety

Disclaimer

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this Best Practice Guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

Updated August 2020. BPG01.04.

© Commonwealth of Australia 2020