



Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

No. 50, 2022

**An Act to amend the *Fair Work Act 2009* to provide
for paid family and domestic violence leave, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
4	Review of this Act.....	3
Schedule 1—Main amendments		4
	<i>Fair Work Act 2009</i>	4
Schedule 2—Amendments relating to ILO Convention (No. 190)		11
	<i>Fair Work Act 2009</i>	11



Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

No. 50, 2022

An Act to amend the *Fair Work Act 2009* to provide for paid family and domestic violence leave, and for related purposes

[Assented to 9 November 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*.

No. 50, 2022

Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	9 November 2022
2. Schedule 1	1 February 2023.	1 February 2023
3. Schedule 2	The day the ILO Convention (No. 190) concerning Violence and Harassment, done at Geneva on 21 June 2019, comes into force for Australia. However, the provisions do not commence at all if the Convention does not come into force for Australia on or before 1 February 2025. The Minister must announce, by notifiable instrument, the day the Convention comes into force for Australia, if that day is on or before 1 February 2025.	9 June 2024 (F2023N00575)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

2 *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* No. 50, 2022

concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Review of this Act

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting subsection (1), the review must consider the impact of the amendments made by this Act on:
 - (a) small businesses; and
 - (b) sole traders; and
 - (c) people experiencing family and domestic violence.
- (3) The persons who conduct the review must consider both quantitative and qualitative research in conducting the review.
- (4) The review must start as soon as practicable after the end of the period of 12 months after the commencement of Schedule 1.
- (5) The persons who conduct the review must give the Minister a written report of the review within 3 months of the commencement of the review.
- (6) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Schedule 1—Main amendments

Fair Work Act 2009

1 Section 12

Insert:

paid family and domestic violence leave means paid family and domestic violence leave to which a national system employee is entitled under section 106A.

2 Section 12 (definition of *unpaid family and domestic violence leave*)

Repeal the definition.

3 Section 17 (note)

Omit “unpaid”, substitute “paid”.

4 Paragraph 61(2)(e)

Omit “unpaid”, substitute “paid”.

5 Division 7 of Part 2-2 (heading)

Omit “unpaid”, substitute “paid”.

6 Section 98

Repeal the section, substitute:

98 Employee taken not to be on paid personal/carer’s leave at certain times

Public holidays

- (1) If the period during which an employee takes paid personal/carer’s leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer’s leave on that public holiday.

Period of paid family and domestic violence leave

- (2) If the period during which an employee takes paid personal/carer's leave includes a period of paid family and domestic violence leave, the employee is taken not to be on paid personal/carer's leave for the period of that paid family and domestic violence leave.

7 Subdivision CA of Division 7 of Part 2-2 (heading)

Omit "Unpaid", substitute "Paid".

8 Section 106A (heading)

Omit "unpaid", substitute "paid".

9 Subsection 106A(1)

Omit "5 days of unpaid", substitute "10 days of paid".

10 Subsection 106A(2)

Omit "Unpaid", substitute "Paid".

11 Subsection 106A(4)

Omit "unpaid", substitute "paid".

12 Paragraph 106A(4)(a)

Omit "5", substitute "10".

13 Subsection 106A(5)

Omit "more than 5 days of unpaid leave", substitute "paid or unpaid leave in addition to the entitlement in subsection (1)".

14 Section 106B (heading)

Omit "unpaid", substitute "paid".

15 Subsection 106B(1)

Omit "unpaid", substitute "paid".

16 Paragraph 106B(1)(c)

Omit "ordinary hours of work", substitute "work hours".

17 Subsection 106B(1) (note 1)

Repeal the note, substitute:

Note 1: Examples of actions, by an employee who is experiencing family and domestic violence, that could be covered by paragraph (b) include arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.

18 Subsection 106B(2)

After “a close relative of an employee”, insert “, a member of an employee’s household, or a current or former intimate partner of an employee,”.

19 After section 106B

Insert:

106BA Payment for paid family and domestic violence leave

- (1) If, in accordance with this Subdivision, an employee takes a period of paid family and domestic violence leave, the employer must pay the employee, in relation to the period:
 - (a) for an employee other than a casual employee—at the employee’s full rate of pay, worked out as if the employee had not taken the period of leave; or
 - (b) for a casual employee—at the employee’s full rate of pay, worked out as if the employee had worked the hours in the period for which the employee was rostered.
- (2) Without limiting paragraph (1)(b), an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours.
- (3) Paragraph (1)(b) does not prevent a casual employee from taking a period of paid family and domestic violence leave that does not include hours for which the employee is rostered to work. However, the employer is not required to pay the employee in relation to such a period.

19A Subsection 106C(2)

Repeal the subsection (including the note), substitute:

- (2) An employer must not, other than with the consent of the employee, use such information for a purpose other than satisfying itself in relation to the employee's entitlement to leave under this Subdivision. In particular, an employer must not use such information to take adverse action against an employee.
- (3) Subsection (2) has effect subject to subsection (4).
- (4) Nothing in this Subdivision prevents an employer from dealing with information provided by an employee if doing so is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information covered by this section that is personal information may also be regulated under the *Privacy Act 1988*.

20 Section 106D (heading)

Omit “unpaid”, substitute “paid”.

21 Paragraph 107(3)(d)

Omit “unpaid”, substitute “paid”.

21A After paragraph 536(2)(b)

Insert:

- ; and (c) not include any information prescribed by the regulations in relation to paid family and domestic violence leave.

22 In the appropriate position in Schedule 1

Insert:

Part 12—Amendments made by the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

51 Definitions

In this Part:

amending Act means the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*.

pre-commencement enterprise agreement means an enterprise agreement made before the commencement of Schedule 1 to the amending Act.

small business employee means an employee whose employer was, on the day Schedule 1 to the amending Act commences, a small business employer (whether or not the employee was employed by the employer on that day).

52 Entitlement to paid family and domestic violence leave

Non-small business employees

- (1) The amendments made by Schedule 1 to the amending Act apply in relation to an employee, other than a small business employee, whose employment starts on or after the commencement of that Schedule.
- (2) The amendments made by Schedule 1 to the amending Act also apply, from the commencement of that Schedule, in relation to an employee, other than a small business employee, whose employment started before that commencement, as if the period:
 - (a) starting on that commencement; and
 - (b) ending on the first day after that commencement that is an anniversary of the day the employment started;were a 12 month period.

Small business employees

- (3) The amendments made by Schedule 1 to the amending Act apply in relation to a small business employee whose employment starts on or after 1 August 2023.
- (4) The amendments made by Schedule 1 to the amending Act also apply, from 1 August 2023, in relation to a small business employee whose employment started before 1 August 2023, as if the period:
 - (a) starting on 1 August 2023; and
 - (b) ending on the first day after 1 August 2023 that is an anniversary of the day the employment started;were a 12 month period.

Start of casual employment

- (5) For the purposes of this clause, if an employee is employed by a particular employer:
 - (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season;the start of the employee's employment is taken to be the start of the employee's first employment with that employer.

53 Resolving interactions between enterprise agreements and paid family and domestic violence leave

- (1) On application by an employer, employee or employee organisation covered by a pre-commencement enterprise agreement, if:
 - (a) the agreement includes terms entitling employees to paid family and domestic violence leave within the ordinary meaning of that expression; and
 - (b) the FWC considers that the effect of those terms is detrimental when compared with the entitlement under Subdivision CA of Division 7 of Part 2-2 as amended by Schedule 1 to the amending Act (the **NES entitlement**);the FWC may make a determination varying the agreement to make the agreement consistent with the NES entitlement.

- (2) On application by an employer, employee or employee organisation covered by a pre-commencement enterprise agreement, the FWC may make a determination varying the agreement to make it operate effectively with the following:
 - (a) the provisions of Subdivision CA of Division 7 of Part 2-2 as amended by Schedule 1 to the amending Act;
 - (b) section 107, to the extent that it relates to taking leave under that Subdivision.

- (3) A variation of a pre-commencement enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

Schedule 2—Amendments relating to ILO Convention (No. 190)

Fair Work Act 2009

1 Subsection 9(4)

Repeal the subsection, substitute:

- (4) Part 6-3 extends provisions of the National Employment Standards relating to unpaid parental leave, paid family and domestic violence leave and notice of termination to employees not otherwise covered by the provisions.

2 Section 12

Insert:

extended paid family and domestic violence leave provisions: see subsection 757B(4).

3 Section 59

Omit:

Divisions 2 and 3 of Part 6-3 extend the operation of the parental leave and notice of termination provisions of the National Employment Standards to employees who are not national system employees.

substitute:

Divisions 2, 2A and 3 of Part 6-3 extend the operation of the parental leave, paid family and domestic violence leave and notice of termination provisions of the National Employment Standards to employees not otherwise covered by those provisions.

4 At the end of subsection 106D(1)

Add:

Note: Leave for victims of crime is a non-excluded matter under paragraph 27(2)(h).

5 Section 106D (note)

Repeal the note, substitute:

Note: To the extent that leave would constitute leave for victims of crime, the entitlement to paid family and domestic violence leave is extended to the persons mentioned in subsection (3) by Division 2A of Part 6-3 (see subsection 757B(2)).

6 Subsection 539(2) (after table item 34)

Insert:

34A	757C	(a) an employee;	(a) the Federal	60 penalty
A		(b) a registered employee association;	Court;	units
		(c) an inspector	(b) the Federal Circuit and Family Court of Australia (Division 2);	
			(c) an eligible State or Territory court	

7 After paragraph 557(2)(p)

Insert:

(pa) section 757C (which deals with contraventions of the extended paid family and domestic violence leave provisions);

8 Section 741

After:

Division 2 extends the entitlements to unpaid parental leave, and related entitlements.

insert:

Division 2A extends the entitlements to paid family and domestic violence leave.

9 After Division 2 of Part 6-3

Insert:

Division 2A—Extension of entitlement to paid family and domestic violence leave

Subdivision A—Main provisions

757A Object of this Division

The object of this Division is to give effect, or further effect, to:

- (a) paragraph (f) of Article 10 of the ILO Convention (No. 190) concerning Violence and Harassment, done at Geneva on 21 June 2019; and
- (b) the Violence and Harassment Recommendation, 2019 (Recommendation No. 206), which the General Conference of the ILO adopted on 21 June 2019;

by providing employees with an entitlement to paid family and domestic violence leave that will help mitigate the impact of domestic violence in the world of work.

Note: The Convention and the Recommendation could in 2022 be viewed on the ILO website (<http://www.ilo.org>).

757B Extending the entitlement to paid family and domestic violence leave

Extension to non-national system employees

- (1) The provisions of Subdivision CA of Division 7 of Part 2-2, and the related provisions identified in subsection (3), apply in relation to a non-national system employee as if:
 - (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and

(b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

Note 1: Subdivision CA of Division 7 of Part 2-2 provides for paid family and domestic violence leave.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are to national system employees and national system employers because of section 60 or another similar section.

Extension to sections 30C and 30M national system employees for victims of crime leave

(2) To the extent that a person would not be entitled to leave under Subdivision CA of Division 7 of Part 2-2 because of subsection 106D(3), the provisions of Subdivision CA of Division 7 of Part 2-2, and the related provisions identified in subsection (3), apply in relation to the person, and the person's employer, as if subsection 106D(3) were omitted.

Note: Subsection 106D(3) has the effect that a person who is a national system employee only because of section 30C or 30M is not entitled to leave under the Subdivision to the extent that the leave would constitute leave for victims of crime.

Related provisions

(3) The related provisions are the following, so far as they apply in relation to Subdivision CA of Division 7 of Part 2-2 as it applies because of subsections (1) and (2):

- (a) Subdivision D of Division 7 of Part 2-2;
- (b) Divisions 2 and 13 of Part 2-2;
- (c) sections 89 and 98;
- (d) any other provisions of this Act prescribed by the regulations;
- (e) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Subdivision CA of Division 7 of Part 2-2, or in provisions referred to in paragraph (a), (b), (c) or (d) of this subsection.

Extended paid family and domestic violence leave provisions

- (4) The ***extended paid family and domestic violence leave provisions*** are:
- (a) the provisions of Subdivision CA of Division 7 of Part 2-2, and the related provisions identified in subsection (3) of this section, as they apply because of this section; and
 - (b) section 757BA.

Modifications are set out in Subdivision B of this Division

- (4A) The extended paid family and domestic violence leave provisions have effect subject to the modifications provided for in Subdivision B.

Regulations made for the purpose of provisions

- (5) Subsections (1) and (2) also apply to any regulations made for the purpose of a provision to which those subsections apply, other than a provision that is modified by Subdivision B.

757BA Employer obligations in relation to pay slips

If an employer gives a person a pay slip relating to paid leave to which the person is entitled because of section 757B, the employer must not include on the pay slip any information prescribed by regulations made for the purposes of paragraph 536(2)(c).

757C Contravening the extended paid family and domestic violence leave provisions

An employer must not contravene the extended paid family and domestic violence leave provisions.

Note: This section is a civil remedy provision (see Part 4-1).

757D References to the National Employment Standards include extended paid family and domestic violence leave provisions

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended paid family and domestic violence leave provisions.

757E State and Territory laws that are not excluded

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to family and domestic violence, to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended paid family and domestic violence leave provisions.

Subdivision B—Modifications of the extended paid family and domestic violence leave provisions

757F Non-national system employees are not award/agreement free employees

A non-national system employee is not an award/agreement free employee for the purpose of the extended paid family and domestic violence leave provisions.

757G Modification of meaning of full rate of pay for pieceworkers

Section 18 has effect as if the following paragraph were added at the end of subsection 18(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the extended paid family and domestic violence leave provisions.

757H Modification of meaning of pieceworker

Section 21 has effect as if the following paragraph were added at the end of subsection 21(1):

- (d) a non-national system employee who is in a class of employees prescribed by the regulations as pieceworkers for the purpose of the extended paid family and domestic violence leave provisions.

757J Modification of provision about relationship between National Employment Standards and agreements

Section 128 has effect as if references to an award/agreement free employee also included references to a non-national system employee.

757K Modification of power to make regulations

Section 129 has effect as if the following subsection were added at the end:

- (2) The regulations may:
 - (a) permit non-national system employers and non-national system employees to agree on matters that would or might otherwise be contrary to an extended paid family and domestic violence leave provision; and
 - (b) prohibit such employers and employees from agreeing on matters, or prohibit such employers from making requirements of such employees, that would or might otherwise be permitted by an extended paid family and domestic violence leave provision.

10 Clause 51 of Schedule 1

Insert:

deferred start day means the day after the end of the period of 3 months beginning on the day Schedule 2 to the amending Act commences.

11 At the end of Part 12 of Schedule 1

Add:

54 Entitlement to extended paid family and domestic violence leave provisions

National system employees

- (1) The amendments made by Schedule 2 to the amending Act apply in relation to a national system employee, whether the employee's employment started before or after the commencement of that Schedule.

Non-national system employees

- (2) The amendments made by Schedule 2 to the amending Act apply in relation to a non-national system employee whose employment starts on or after the deferred start day.
- (3) The amendments made by Schedule 2 to the amending Act also apply, from the deferred start day, in relation to a non-national system employee whose employment started before the deferred start day, as if the period:
 - (a) starting on the deferred start day; and
 - (b) ending on the first day after the deferred start day that is an anniversary of the day the employment started;were a 12 month period.

Start of casual employment

- (4) For the purposes of this clause, if an employee is employed by a particular employer:
 - (a) as a casual employee; or
 - (b) for a specified period of time, for a specified task or for the duration of a specified season;the start of the employee's employment is taken to be the start of the employee's first employment with that employer.

*[Minister's second reading speech made in—
House of Representatives on 28 July 2022
Senate on 8 September 2022]*

(58/22)

No. 50, 2022

*Fair Work Amendment (Paid Family and Domestic Violence Leave)
Act 2022*

19