



DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

Family and domestic violence clause

(AM2015/1)

RESTAURANT INDUSTRY AWARD 2010

[MA000119]

Restaurants

JUSTICE ROSS, PRESIDENT
VICE PRESIDENT HATCHER
COMMISSIONER SPENCER

MELBOURNE, 27 JULY 2018

Leave to deal with family and domestic violence.

A. Further to the Full Bench decision issued on 6 July 2018 [[\[2018\] FWCFB 3936](#)], the above award is varied as follows:

1. By inserting clause 38A as follows:

38A. Leave to deal with Family and Domestic Violence

38A.1 This clause applies to all employees, including casuals.

38A.2 Definitions

(a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or

(iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of *family member* in clause 38A.2(a) includes a former spouse or de facto partner.

38A.3 Entitlement to unpaid leave

An employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:

(a) the leave is available in full at the start of each 12 month period of the employee's employment; and

(b) the leave does not accumulate from year to year; and

(c) is available in full to part-time and casual employees.

Note: 1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

38A.4 Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

(a) is experiencing family and domestic violence; and

(b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

38A.5 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

38A.6 Notice and evidence requirements

(a) **Notice**

An employee must give their employer notice of the taking of leave by the employee under clause 38A. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

(b) Evidence

An employee who has given their employer notice of the taking of leave under clause 38A must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 38A.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

38A.7 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 38A.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 38A prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

38A.8 Compliance

An employee is not entitled to take leave under clause 38A unless the employee complies with clause 38A.

2. By updating the table of contents accordingly.

B. This determination comes into operation from 1 August 2018. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after 1 August 2018.

PRESIDENT

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