

Work, Life, Family

Policy Framework

1. Changes in social, family and labour market structures mean that both partners of couple families are now likely to be employed, making balancing work, life and family a key industrial priority for union members.
2. Congress believes that unions, employers and governments have a responsibility to support employees to balance their work and caring responsibilities.
3. Congress welcomes the introduction of the Paid Parental Leave scheme by the Labor Government and the proposed introduction of Dad and Partner Pay in 2013.
4. For paid parental leave to genuinely assist parents in their employment however, employees returning from parental leave must also be entitled to appropriate flexibility in their work arrangements in order to accommodate their ongoing caring responsibilities.
5. In addition, higher participation in the workforce for women and the trend towards de-institutionalisation of care for dependents with a disability, or frail, elderly dependents has increased the need for support for workers with a wider range of caring responsibilities, particularly the sandwich generation of workers who care for both children and elderly parents.¹
6. Unions will campaign and bargain to:
 - a) Extend employee rights to request flexible work arrangements in order to meet a wider range of caring responsibilities and ensure procedural fairness for all employees making such requests;
 - b) Extend the amount and scope of carer's leave entitlements;
 - c) Build on the new government Paid Parental Leave and proposed Dad and Partner Pay schemes by improving and protecting employer provided paid parental leave and superannuation contributions;
 - d) Improve provisions of the *Fair Work Act*, *Equal Employment Opportunity for Women in the Workplace Act* and anti-discrimination legislation to achieve greater equity and opportunity for employees with family responsibilities; and

¹ See Congress 2012 Social Inclusion Policy regarding financial and infrastructure support for carers.

- e) Extend employee rights in relation to public holidays and weekends in a modern economy.

Right to request a change to working arrangements to meet caring responsibilities

7. Congress notes that the NES right to request a change to working arrangements to meet caring responsibilities is only available to those who care for a child under school age or a child with a disability who is under the age of 18 years of age. Consequently, employees who care for school aged children, adult children with a disability or frail elderly dependents do not have a right to request changes to their work arrangements to meet their caring responsibilities.² This unfairly discriminates between groups of employees with caring roles and fails to acknowledge the range of caring responsibilities of workers.
8. Congress also notes that the right to request a change to working arrangements to meet caring responsibilities or to extend unpaid parental leave³ are the only two provisions of the FWA which specifically deny workers the procedural justice of a right to appeal an unreasonable refusal unless they are able to negotiate the right as part of their workplace agreement.⁴ This discriminates against workers with low bargaining power, who, ironically, are more likely to be women with caring responsibilities. Congress regards this as out of step with community standards of equity and fairness.
9. Unions will campaign to improve the National Employment Standard (NES) to:
 - a) Extend the eligibility for the right to request a change to working arrangements to meet caring responsibilities to include *'any employee who cares or expects to care for a dependant who reasonably relies on the employee for care'*; and
 - b) Ensure all employees have a right to appeal an employer's unreasonable refusal of a request, clearly setting out the employer's obligations to properly consider the request and make reasonable efforts to accommodate the request.⁵
10. In addition, unions will continue to bargain for:
 - a) Greater employee control over their work arrangements, including shift patterns, rosters, targets and workloads in order to meet their caring responsibilities; and

² FWA, s.65(1)

³ FWA, s.76(4)

⁴ FWA, s. 186(6) and s.739(2)

⁵ As outlined in the Victorian Equal Opportunity Act (1995) s.14A

- b) Equality of opportunities for casual and part-time employees in the workplace, including access to paid leave and working time entitlements.
11. Workers with family and caring responsibilities are particularly vulnerable to pressure to agree to “Individual Flexibility” clauses if it is the only way their employer will grant much needed changes to work arrangements to meet caring responsibilities.
 12. Congress regards the use of Individual Flexibility Clauses as inappropriate particularly in the circumstances of workers with caring responsibilities and affirms the 2009 Congress Policy on Individual Flexibility Clauses.

Personal / carer’s leave

13. Unions will continue to campaign for improved NES entitlements to better assist workers with caring responsibilities including:
 - a) Extending the eligibility for paid personal/carer’s leave so that it is available to employees who *care or expect to care for a dependant who reasonably relies on the employee for care* (including Indigenous kinship relationships not just immediate family or household members);
 - b) Extending the scope of personal / carer’s leave to include a broader range of carer responsibilities not limited to illness, injury or emergencies;
 - c) Increasing the amount of (dedicated) paid carer’s leave by 5 days;
 - d) Including the provision of palliative care leave as a minimum standard; and
 - e) Ensuring that workers taking paid personal/carer’s leave do not suffer diminution in the amount they ordinarily earn.
14. Unions will also continue to bargain for:
 - a) Working arrangements that provide respite for working carers (such as purchased leave arrangements);
 - b) Resource support for carers (including workplace information and referral services) and workplace based care (where appropriate); and
 - c) Other additional leave entitlements aimed at assisting employees balance work with caring responsibilities.

Parental Leave

15. Congress welcomes the implementation of the Paid Parental Leave Scheme in 2011 and the planned introduction of Dad and Partner Leave in 2013.
16. Congress will seek improvements to the Paid Parental Leave Scheme which will ensure the scheme:
 - Promotes maternal and child well-being;
 - Assists parents to remain in the paid labour force;
 - Reduces the gender pay gap (including income adequacy in retirement); and
 - Assists families to combine work and family responsibilities.
17. Unions will seek to improve the NES Parental Leave entitlements and the Paid Parental Leave Scheme through the 2013-14 scheduled Review in order to:
 - a) Align the NES eligibility criteria for unpaid parental leave with that of the Paid Parental Leave Scheme;
 - b) Provide for employer superannuation contributions to be made on periods of paid and unpaid parental and secondary carers leave;
 - c) Provide greater flexibility for parents to take their leave entitlement including double the time at half pay;
 - d) Eligibility for paid and unpaid leave for parents of children on permanent care orders;
 - e) Accrual of all entitlements including payment of public holidays during periods of paid and unpaid parental leave;
 - f) Introduction of specific eligibility criteria which recognises the long term workforce attachment of seasonal, casual and contract workers who are required to take breaks in employment of more than 8 weeks per annum; and
 - g) Introduction of paid breastfeeding breaks and appropriate breastfeeding facilities.

18. Where appropriate, unions will bargain for the above improvements, and also for:
- a) Employer top up on the government scheme to full income replacement level;
 - b) Increases in employer provided paid parental leave to at least reach the World Health Organisation standard of 26 weeks paid parental leave.
 - c) Improved paid leave provisions in relation to assisted reproduction or fertility treatment, pregnancy, adoption, childbirth, bonding and breastfeeding; and
 - d) Provide employees with the right to return to work part-time from paid or unpaid parental leave.

Dad and Partner Leave

19. As with Paid Parental Leave, unions will campaign and bargain for the relevant improvements listed above for Dad and Partner Pay (or secondary carer's leave).
20. In addition, unions urge the government to ensure that the proposed Dad and Partner Leave legislation:
- Is clearly drafted to ensure that employers and employees may agree to bargain for top up of the government component; and
 - Provides employers with the option of passing the government payment on to employees as part of the normal pay cycle.

Discrimination

21. Congress welcomes the extended discrimination provisions contained in the *Fair Work Act (2009)*, in particular the new protections of employees with family or caring roles.
22. However, far too many complainants are discouraged from using anti-discrimination provisions due to onerous burden of proof requirements. Unions will campaign for a reverse onus of proof model as adopted in the *Fair Work Act*.
22. However Congress notes that to be unlawful, adverse treatment on these grounds may also be a breach of the relevant State anti-discrimination law (most of which do not protect employees with family or caring roles). Unions will

campaign to ensure there are no gaps in the application of the anti-discrimination provisions of the Act.⁶

Family and Domestic Violence

23. Congress supports the principle that family and domestic violence is a workplace issue in which unions can play a role to assist employees experiencing family or domestic violence maintain paid employment, support them through the process of escaping family violence and promote safe and secure workplaces.
24. It is important that unions, as part of the community, advocate for workers' rights to a safe home, community and workplace and take a stand against family and domestic violence.
25. In workplace bargaining, the ACTU strongly encourages unions to include provisions designed to protect and support employees who are employees experiencing family or domestic violence in line with the following principles:
 - a) Dedicated additional paid leave for employees experiencing family or domestic violence, with an aim to achieving 10 days paid leave ;
 - b) Confidentiality of employee details must be assured and respected;
 - c) Workplace safety planning strategies to ensure protection of employees should be developed and clearly understood by the parties concerned;
 - d) The agreement should provide for referral of employees to appropriate domestic violence support services;
 - e) Provision of appropriate training and paid time off work for agreed roles for nominated contact persons (including union delegates or health and safety representatives if necessary);
 - f) Employees entitled to family and domestic violence leave should also be able to access flexible work arrangements where appropriate;
 - g) Employees must be protected against adverse action or discrimination on the basis of their disclosure of, experience of, or perceived experience of, family and domestic violence.
26. In addition, Congress supports:

⁶ See Congress 2012 Wages and Conditions Policy for further discussion of anti-discrimination protections
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- a) The creation of a new ground of discrimination (including in state and federal anti-discrimination legislation and the Fair Work Act) to better protect employees who are experiencing, have experienced, or are perceived to be experiencing family or domestic violence against adverse action;
 - b) Extend the scope of the right to request provisions to enable employees experiencing family or domestic violence to maintain employment whilst addressing needs arising from domestic violence;
 - c) The Australian Law Reform Commission recommendation to include paid family and domestic violence leave as an entitlement under the NES;
 - d) Initiatives to generate greater awareness and adoption of workplace initiatives to support cultural changes aimed at eliminating family and domestic violence.
27. Congress supports the conduct of appropriate further research to identify the key issues relating to the interface of family and domestic violence and the workplace.

Public Holidays and weekends

28. Congress recognises that in modern economy where an increasing number of employees work in 7 day week industries, Public Holidays are increasingly important as rare opportunities for families, friends and the community as a whole to come together and celebrate.
29. Congress reaffirms the principle that Public Holidays and weekends are important leisure days for employees, their families and the community as a whole.
30. Congress supports the principle that all employees not engaged in essential services should have an absolute right to refuse to work on a Public Holiday.
31. Where employees do work on a Public Holiday or weekend they shall receive an appropriate penalty rate to compensate them for not being with family, or friends or the community as a whole on that day.