

Secure Jobs. Better Future.

Work, Life and Family

Developments since Congress 2009

There have been a number of legislative advances around work, life and family responsibilities since 2009.

The *Fair Work Act 2009* (“FW Act”) anti-discrimination provisions protect workers with family or caring responsibilities against adverse action.¹

In January 2010, Australia’s first paid parental leave policy was introduced, providing 18 weeks of pay at the minimum wage for primary carers. Two weeks of concurrent leave for secondary carers at the minimum wage will be introduced from 2013 as part of the Dad and Partner Leave scheme. Unions have achieved significant improvements to the scheme through workplace bargaining, particularly in extending the duration, and amount of paid leave and securing superannuation contributions during periods of parental leave.

The *Equal Opportunity for Women in the Workplace Act Amendment Bill* currently before Parliament aims to more effectively monitor workplace equality for women, provide greater involvement for employees and their unions, and encourage employers to proactively address discriminatory practices. The Act will be renamed the *Workplace Gender Equality Act* to reflect the focus on male and female employees with caring responsibilities, recognising the growth in dual income earning families sharing caring responsibilities.

An Exposure Bill consolidating the federal Sex, Age, Race and Disability Acts is being drafted and is expected to be available for comment by mid-2012. Unions have advocated for no diminution of existing rights and for improvements to the efficacy of the Acts, in particular adopting the reverse onus of proof model contained in the Fair Work Act and greater preventative and punitive measures.

Union collaboration with the Family and Domestic Violence Clearing House (Workplace Rights Project) has been very successful, with over 600,000 (mostly public sector) workers now entitled to paid family and domestic violence leave and support through workplace agreement provisions.

¹ However, note that the provision needs to be clarified as it is not established whether the provision protects workers with family or caring responsibilities where the employer’s action is not illegal under a state or territory jurisdiction.

Key issues

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

In addition, 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.³

However, neither industrial legislation nor workplace practices have evolved adequately to address the needs of this rapidly growing group of workers with caring responsibilities.

Although the Fair Work Act gives workers the right to request an extension of a period of unpaid parental leave⁴ or for a change to working arrangements in order to meet caring responsibilities⁵, this only applies to carers of pre-school aged children or children under 18 with a disability. These limitations do recognise the significant number of employees with caring responsibilities for school aged children, adults with a disability or elderly parents.

In addition, the Fair Work Act does not provide any right to appeal an employer's unreasonable refusal of a request. There is a body of anecdotal evidence from unions that employers routinely refuse members' requests for flexible work arrangements without genuinely considering the request. There is also a growing body of case law indicating widespread discrimination against workers with caring responsibilities, particularly those returning from a period of parental leave.

The consolidation of personal and carers' leave has resulted in the depletion of personal leave for employees with caring responsibilities. In addition, the scope of carers' leave entitlements does not include instances where employees need to take time off to assist a dependent in non-emergency or injury related situations, such as to arrange for hospice care or to attend appointments.

Whilst the Paid Parental Leave scheme has been lauded by unions as a positive start, the 2013 Review of the scheme will be used by unions to highlight key areas of concern including the need for:

- Employer superannuation contributions and accrual of entitlements during periods of parental leave;
- Eligibility for long-term seasonal or sessional employees;
- Consistency of eligibility criteria for NES unpaid leave and the new PPL scheme;
- Employer 'top up' of the government contribution to full income replacement and extension of the duration of paid parental leave;

² Balancing Work and Family was the 2nd highest priority for both men and women workers who responded to the ACTU Census 2011.

³ See Congress 2012 Social Inclusion Policy regarding financial and infrastructure support for carers.

⁴ FWA, s.76

⁵ FWA, s. 65

- Paid lactation breaks and access to appropriate facilities; and
- Improved rights for employees returning to work from parental leave to request a change to work arrangements in order to meet caring responsibilities.

Agenda 2012-2015

Promoting work-life balance through stronger legislative entitlements will remain an important aspect of our agenda over the next three years. In particular, the policy commits unions to campaign for:

- Improvements to the right to request flexible work arrangements, including coverage of a wider scope of caring responsibilities; an obligation on employers to demonstrate they have given serious consideration to a request and a legislated right for all employees to appeal employer's refusal;
- Improved rights for workers in insecure, casual or part-time employment, in particular more control over hours of work and protection of employees with caring responsibilities;
- Enhancement of the leave options available under the Fair Work Act, including more options for carers, options for family and domestic violence leave, and a closer alignment between paid and unpaid parental leave;
- Clarifying the anti-discrimination provisions of the Fair Work Act to ensure the federal protection prevails over inferior state and territory law, and amending federal anti-discrimination legislation to include a reverse burden of proof on employers;
- Continuing to improve parental leave provisions both through workplace bargaining and through the legislated review process outlined in the Paid Parental Leave legislation;
- Continuing to bargain for provisions to assist employees experiencing family or domestic violence, in particular extending coverage of employees in the private sector.