

4 October 2018

NAT 023/18

FWC Decision – Family Friendly Work Arrangements Case

SUMMARY

A Full Bench of the Fair Work Commission (FWC) has handed down a decision determining the terms of a model award clause arising from the FWC's *Family Friendly Work Arrangements Case*.

At this stage no awards have been varied to incorporate the new clause. Ai Group will advise Members of the variations to specific awards, once the terms of the variations and operative dates have been settled by the Commission.

Family Friendly Work Arrangements Decision

Members were advised of the FWC's *Family Friendly Work Arrangements Case* and Ai Group's strong opposition to the ACTU's claims in Member Advices [NAT 009/17](#) and [NAT 007/18](#).

A Full Bench of the FWC has handed down a decision determining the terms of a model award clause arising from the case.

The model clause is set out in the **Attachment**. The clause:

- Applies where an employee has made a request for flexible working arrangements under s.65 of the *Fair Work Act 2009*;
- Sets out a process that the employer must follow before responding to an employee's request;
- Sets out the issues that an employer must address in its notice to the employee in circumstances where the employer refuses an employee's request for flexible work arrangements;
- Provides that disputes about employee requests for flexible work arrangements can be dealt with through the dispute resolution clause in the relevant award. (**Note:** The FWC does not have the power to arbitrate a dispute without the employer's consent).

The FWC intends to issue draft determinations for each award and give parties the opportunity to comment before final determinations are issued varying each award.

Ai Group will advise Members of the variations to each relevant award.

Ai Group has played the leading role in representing employers throughout the *Family Friendly Work Arrangements Case*. If the ACTU's claims had been accepted, all awards would have been varied to give employees the right to dictate to their employer what hours and days they work, with the employer having no right to refuse regardless of the circumstances.

Do you require further advice?

For more information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 55 66 77.



Stephen Smith
Head of National Workplace Relations Policy

MODEL AWARD CLAUSE – REQUESTS FOR FLEXIBLE WORK ARRANGEMENTS**X Requests for flexible working arrangements**

Employee may request change in working arrangements

X.1 This clause X applies where an employee has made a request for a change in working arrangements under s.65 of the Act.

- NOTE:
1. Section 65 of the Act provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in s.65(1A).
 2. An employer may only refuse a s.65 request for a change in working arrangements on 'reasonable business grounds' (see s.65(5) and (5A)).
 3. Clause X is an addition to s.65.

Responding to the request

X.2 Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

What the written response must include if the employer refuses the request

- NOTE:
1. The employer must give the employee a written response to an employee's s.65 request within 21 days, stating whether the employer grants or refuses the request (s.65(4)).
 2. If the employer refuses the request, the written response must include details of the reasons for the refusal (s.65(6)).

X.3 Clause X.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause X.2.

- (a) The written response under clause X.2 must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (b) If the employer and employee could not agree on a change in working arrangements under clause X.2, the written response under clause X.2 must:
 - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
 - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

- X.4** If the employer and the employee reached an agreement under clause X.2 on a change in working arrangements under clause X.2 that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

Dispute resolution

- X.5** Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause X, can be dealt with under clause Y—Consultation and Dispute Resolution.