

# 8. DFV Workplace Rights

***Experiencing the affects of DFV at work can be stressful, upsetting and distracting. It can make it hard to perform your duties and can also be a workplace safety risk. Employers are increasingly acknowledging the fact that DFV is a workplace issue and many workplaces are already on board with providing support and ensuring that you are referred to the right people who can assist with your situation.***

If you are experiencing DFV, remember: DFV is about power and control and it may be possible to break the cycle by seeking support to address the abuse. It is not your responsibility to stop the violence; perpetrators are responsible for the violence. What you can do is access support to help keep you safer while you get assistance to address the abuse.

## **How it might help to disclose the DFV at work?**

Telling your workplace may seem embarrassing or confronting, but it is something to consider because:

- If you are late or absent from work or your work performance suffers, your workplace will be aware of the reason and you are less likely to face warnings, disciplinary or adverse action. If this does occur you have to your advantage that you informed the workplace of the DFV.
- If you raise the issue, your workplace can take steps to help keep you safer and limit opportunities for the perpetrator to have access to you.
- Being upfront about your situation may make it easier if the abusive person tries to cause trouble for you at work.

If you disclose your situation to your workplace, you only need to inform them about things that directly affect or impact on your work. This includes anything that could pose a workplace safety risk. Your workplace should keep your information confidential and private except for situations where you or other workers may be at risk of harm.

Is the person who is abusing you:

- Constantly calling, emailing or texting you at work?

- Following you to or from work?
- Making threats to harm you or your co-workers?
- Threatening to contact your work and tell your boss embarrassing personal information and/or make you lose your job?
- Threatening to harm your public reputation (eg on the internet or social media such as Facebook)?
- Coming into or hanging around your workplace to intimidate you?

***If so, you should tell your workplace.***

## **DFV related work entitlements. Taking leave to address DFV**

All employees, including casuals covered by the Fair Work Act, National Employment Standards (NES), have an entitlement to five days unpaid Family and Domestic Violence Leave.

This leave can be applied for if you need to do something to deal with the impact of DFV and its impractical to do so outside of their ordinary work hours. This could include:

- Making arrangements for their safety or that of a close relative
- Attending court hearings, or
- Assessing specialist DFV, police or legal services

Your employer should be advised as soon as possible of the requirement to take leave and how long the leave is likely to last.

Exactly what other leave you can take and how much leave you can take depends on where you work and what is in your contract of employment.



Many employees have access to paid leave entitlements through their enterprise agreement. This is an agreement made between employees and the employer about conditions of employment. Your employer should provide you with a copy of this agreement if one exists in your workplace.

**You can ask for paid or unpaid leave but also to access other kinds of leave.**

### **Personal/Carer's and Compassionate Leave**

All employees covered by the Fair Work Act have the right to take Personal/Carer's and compassionate leave under the NES and may do so for health issues related to domestic violence, sexual assault, or for issues related to being the carer of a person who has health issues as a result of experiencing domestic violence or sexual assault.

#### **Under the NES, all permanent employees are entitled to:**

- 10 days of paid personal/carers leave per year
- A further 2 days of unpaid carer's leave per occasion if all paid leave has been used up, and
- 2 days of paid compassionate leave per occasion

#### **Under the NES, casuals are entitled to:**

- 2 days of unpaid carer's leave per occasion, and
- 2 days of unpaid compassionate leave per occasion.

#### **Personal/carers leave can be taken if:**

- You are not fit to work because of personal illness or injury, or
- You need to provide care or support for a member of your immediate family or household due to personal illness or injury, or an unexpected emergency. The definition of immediate family includes your spouse, de facto partner, child, parent, grandparent, grandchild or sibling, and your spouse or de facto partner's child, parent, grandparent, grandchild or sibling.

Compassionate leave can be taken if a member of your immediate family or household dies or has an illness or injury that poses a serious threat to their life.

### **Annual Leave**

Under the NES, permanent full-time workers are entitled to 4 weeks of paid annual leave each year, and permanent part-time workers are entitled to this on a pro-rata basis. Some shift workers are entitled to 1 extra week of annual leave each year. An employer may offer more than 4 weeks paid annual leave. For example Northern Territory Government employees have an entitlement of 6 weeks annual leave per year.

*Your employer cannot unreasonably refuse your request for annual leave.*

### **Casual employees**

Casual employees are not entitled to paid annual leave under the NES but you may be entitled to leave without pay.

### **Fixed term contract workers**

Fixed term contract employees are generally entitled to annual leave. Usually the allocation of leave is estimated at a pro-rata basis. For example if you are employed on a fixed contract for 6 months, you would be entitled to 2 weeks annual leave (rather than 4 weeks which is the full annual entitlement under the NES).

### **Queensland public sector employees**

In Queensland public sector workers (including state and local government workers have different entitlements from national system workers. These should be available on your workplace intranet if you search for domestic and family violence entitlements.

In Queensland see the Queensland Government website <https://www.google.com/search?client=firefox-b-d&q=qld+gov+workplace+package+dfv>

### **How do I request a flexible work arrangement?**

NES employees have the Right to Request Flexible Working Arrangements if you have 12 months continuous service with your employer, and, if you are a casual, you have an expectation of ongoing employment on a regular and systematic

basis. You can make the request if you are experiencing domestic or family violence or if you are the carer of somebody who is experiencing domestic or family violence.

### **How to request flexible working arrangements**

To make the request for flexible working arrangements you must make the request in writing and include what change you are wanting and why.

#### **Here are some examples of what you can ask for:**

- Changes in work patterns for safety reasons: e.g. patterns of working hours and/or location of work.
- Transfer to an alternative working location either permanently or as a temporary safety measure.
- Change in duties to remove you from public access (please note removal from public access is difficult in some workplaces, e.g. retail so while you can ask for this the employer may have grounds to refuse).
- Flexibility in working hours in amount of hours worked and rostering to allow you to attend matters related to the DFV and leaving the abuser, for example: court appearances, finding safe accommodation, school appointments or transfers, counselling, doctors appointments.

#### **In your proposal consider and include any benefits to the employer, for example:**

- Workplace health and safety for yourself, colleagues and the workplace.
- Continuity in the workplace and cost saving on unnecessary staff turnover when you are able to keep your job despite suffering the DFV; which you wish to do as you are committed to the organisation and your role
- That you respect your employer as a leader in their field; and in providing support through this DFV workplace. provision they are furthering their standing and reputation as an industry leading best practice organisation.

#### **For more information and for template letters visit:**

<https://www.fairwork.gov.au/employee-entitlements/flexibility-in-the-workplace/flexible-working-arrangements>

#### **What happens next?**

Your employer must give you a written response within 21 days, stating whether the request is granted or refused, and if refused, provide their reasons.

You should be able to clearly understand why your request is rejected. The employer cannot just give a refusal without reasons.

A request can only be refused on reasonable business grounds which may include the effect on the workplace, including the financial impact and the impact on efficiency, productivity and customer service; the inability to organise work among existing staff; and the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the request.

#### **Help if your request is refused:**

If you want to challenge the rejection of your flexible working arrangement request you can seek advice through:

- Working Women Queensland <https://brq.org.au/supporting-women-at-work/>
- The Fair Work Ombudsman <https://www.fairwork.gov.au/>
- Queensland Human Rights Commission on 1300 130 670 <https://www.qhrc.qld.gov.au/>
- Your Union: <https://www.theservicesunion.com.au>

Fact: If you have children of school age or younger and are affected by DFV you have the right, under section 65 of the Fair Work Act (2009) to Request Flexible Working Arrangements on the grounds of both the DFV and your role as a parent.

#### **Staying Safe at Work**

Workplaces have a duty to ensure your health and safety as an employee.

You have a right to ask your workplace for help if you're concerned about your safety at work; in fact workers also have a duty to take reasonable care to protect their own safety, which can include asking your workplace for help.

Consider talking to your workplace about what it can do to assist you to be safe and keep doing your job.

Check your workplace health and safety policies; your workplace may have a policy on workplace violence or harassment.

Ask your occupational, health and safety officer, human resources person or manager for the policies if you can't find them.

Ask your workplace how they can help you with a safety plan. A safety planning process can help to identify and recognise your safety needs and helps to plan for emergencies or times of increased danger. Safety planning at work should not only consider both your physical and psychological safety.

**Some examples of how your workplace can help to increase safety:**

- Having someone walk you to your car or transport when you leave work and/or providing safe parking in secure premises.
- Asking your workplace to notify relevant staff not to tell anyone private information about your location or movements
- Making sure you're not left alone at a work location with public access.
- With your consent, provide a photo and details of the abusive person to colleagues, so that they can identify them and call the police if necessary.
- Diverting or change of contact details for phone calls and/or emails.
- Recording capabilities for phone calls.
- Your workplace being named in any protection orders made by police for you preventing abuse by the perpetrator, such as an DVO. Police can help you with this.
- Organise your wages or some of your wages to go to a separate bank account which only you can access.
- Allow changes in work patterns including hours and/or location of work or duties which prevent you from being accessible to the public. This may come under your Right to Request a Flexible Work Arrangement.